

Colleen M. Pratt (SBN 222770)s
Michael D. Ainbinder (SBN 56420)
LAW OFFICES OF AINBINDER & PRATT
5150 E. Pacific Coast Highway, Suite 720
Long Beach, CA 90804
TEL (562) 498-4600
FAX (562) 498-4602

Attorneys for LIEN CLAIMANT
NEW AGE PHARMACEUTICALS

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

LUIS ARELLANO,

Applicant,

v.

SHERMAN OAKS AUTO RESORT;
STATE COMPENSATION INS. FUND,

Defendant,

NEW AGE PHARMACEUTICALS

Lien Claimant.

EAMS NO. ADJ 2131629

**NEW AGE PHARMACEUTICALS'
OBJECTION TO ZENITH INSURANCE'S
PETITION FOR BIFURCATION AND
CONSOLIDATION OF COMPOUND
PHARMACY LIENS**

Lien claimant, NEW AGE PHARMACEUTICALS (hereinafter "New Age"), by and
through its attorneys of record, the Law Offices of Ainbinder & Pratt, presents the instant
Objection to the Petition for Bifurcation and Consolidation filed by Zenith Insurance.

**NEW AGE PHARMACEUTICALS' OBJECTION TO PETITION FOR BIFURCATION
AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

Since the onslaught of petitions to consolidate, there have been numerous petitions which claim the existence of common issues of law or fact, but fail to specifically cite any relevant issues, the consolidation of which would assist the WCAB in achieving its goal of expeditiously dealing with these liens.

Zenith’s petition is particularly troubling insofar as Zenith indicates “that the best option is to consolidate all compound pharmacy lien disputes for discovery and trial before a single WCJ...” yet only sets forth one example of a foreseeable common issue, i.e., “how the value of compound pharmacy liens should be calculated in the absence of a fee schedule.” It is clear the motivation to consolidate is fueled by cost-saving issues rather than out of concern for judicial resources. If Zenith and other insurance companies vying for consolidation were interested in conserving judicial resources, they would simply arrange for bulk settlement meetings, or better yet, settle the liens prior to lien claimants having to file Declarations of Readiness to Proceed.

Although Zenith lists three issues suitable for consolidation: 1) Proper qualification and licensing of the medical provider, 2) reasonable medical necessity, and 3) reasonable value, it does not elaborate on the first two. Responding party, however, will address all three issues raised by Zenith.

II. ARGUMENT

**A. THE COURT CANNOT CONSOLIDATE IN ORDER TO DETERMINE THE
VALUE OR REASONABLENESS OF THE COMPOUND MEDICATION**

With regard to reimbursement of medical treatment in general, *Labor Code* §5307.1 empowers the Administrative Director (AD) to adopt an official medical fee schedule (OMFS)

**NEW AGE PHARMACEUTICALS’ OBJECTION TO PETITION FOR BIFURCATION
AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**

1 that establishes reasonable maximum fees paid for medical services. The fees are in accordance
2 with the fee-related structure and rules of the relevant Medicare and Medi-Cal payment systems.

3 Although section 5307.1 envisions a comprehensive OMFS encompassing all services
4 authorized in *Labor Code* §4600, it does not limit insurance companies' liability to treatment
5 options actually covered by the OMFS. The exclusion or omission of certain modalities or
6 medical treatment, including compound medications, does not mean that they are not
7 reimbursable. Rather, there are established alternative methods of valuation espoused in
8 prevailing case law. (*See Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases
9 1588). Moreover, different lien claimants will have different evidence pertaining to their usual
10 and customary charges, which will create the need for separate litigation.
11

12 More importantly, however, if the intent of the consolidation is to determine the value of
13 certain raw ingredients or commonly dispensed creams, then such action would contravene the
14 role of the judiciary, violating the doctrine of separation of powers.
15

16 In any event, responding party, New Age, provides NDC numbers on its invoices which
17 can be entered into the DWC compound calculator in order to obtain values. A consolidation on
18 this issue is not necessary.
19

20 **B. THE ISSUE OF MEDICAL NECESSITY IS NOT AND CANNOT BE COMMON TO**
21 **ALL COMPOUND MEDICATION LIENS**
22

23 Medical necessity issues vary from applicant to applicant given the unique responsiveness
24

25 **NEW AGE PHARMACEUTICALS' OBJECTION TO PETITION FOR BIFURCATION**
26 **AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**
27

1 of every person to particular medications. A consolidation on this issue is not only impractical,
2 but would be an inappropriate use of judicial resources. Such a determination is best left to
3 physicians who prescribe the medications based on their training, experience, and evaluation of
4 the applicants.

5 Further, the evidentiary requirements regarding medical necessity have been exhaustively
6 set forth in case law. Zenith fails to set forth which doctors, or compound medications, require
7 consolidation. Moreover, Zenith fails to cite a physician or medication common to all lien
8 claimants, let alone New Age, that would justify consolidation on this “common issue.” From a
9 practical standpoint, the issue of medical necessity will exist for all lien claimants on the case
10 (not just compounds), so separate litigation will still take place on the other liens regarding the
11 same issue.

12 Medical necessity simply cannot be common to all compound lien claimants, or even to all
13 New Age liens, because applicants have different mechanisms of injury, respond to treatment
14 differently, and will have different nature and extent issues. Any attempt to consolidate on the
15 issue of medical necessity undermines the very essence of consolidation, which is to find
16 common ground upon which to consolidate.

17
18 **C. NONE OF THE FACTORS SET FORTH IN CCR §10589 (Consolidation of**
19 **Cases) HAVE BEEN ADDRESSED IN ZENITH’S PETITION**

20
21 CCR 10589 reads, in pertinent part,

- 22 a) Consolidation of two or more related cases, involving either the same injured
23 employee or multiple injured employees, rests in the sound discretion of the
24

25 **NEW AGE PHARMACEUTICALS’ OBJECTION TO PETITION FOR BIFURCATION**
26 **AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**

1 Workers' Compensation Appeals Board. In exercising that discretion, the
2 Workers' Compensation Appeals Board shall take into consideration any relevant
3 factors, including but not limited to the following:
4 (1) whether there are common issues of fact or law;
5 (2) the complexity of the issues involved;
6 (3) the potential prejudice to any party, including but not limited to whether
7 granting consolidation would significantly delay the trial of any of the cases
8 involved;
9 (4) the avoidance of duplicate or inconsistent orders; and
10 (5) the efficient utilization of judicial resources.

11 Zenith failed to state one fact or law common to all lien claimants (the identities of which
12 are unknown.) In general fashion, Zenith lists “proper qualification and licensing of the medical
13 provider”, but cites no evidence or gives any basis for its assertion that licensing, or lack thereof,
14 is such a prominent issue so as to require consolidation on this issue.

15 Zenith further fails to indicate how consolidation will help avoid duplicate or inconsistent
16 orders, how consolidation on a common issue or fact would be an efficient utilization of judicial
17 resources, or what the issues involved are so complex that the entire class of compounds need to
18 be consolidated.

19 ///

20 ///

21 ///

22 ///

23 ///

24

25 **NEW AGE PHARMACEUTICALS’ OBJECTION TO PETITION FOR BIFURCATION**
26 **AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**

26

27

28

1 **D. ZENITH’S PETITION IS DEFECTIVE ON ITS FACE. CCR 10589 REQUIRES THE**
2 **PETITION TO CONTAIN THE ADJUDICATION CASE NUMBERS OF ALL THE**
3 **CASES SOUGHT TO BE CONSOLIDATED.**

4 CCR 10589 (b) reads:

5 “Consolidation may be ordered by the Workers' Compensation Appeals Board on
6 its own motion, or may be ordered based upon a petition filed by one of the
7 parties. A petition to consolidate shall:

8 (1) List all named parties in each case;

9 (2) Contain the adjudication case numbers of all the cases sought to be
10 consolidated, with the lowest numbered case shown first;

11 (3) Be filed in each case sought to be consolidated; and

12 (4) Be served on all attorneys or other representatives of record and on all non-
13 represented parties in each case sought to be consolidated. (Emphasis added)

14 Here, Zenith only lists the master case under which it files the petition and fails to list any
15 other case or lien claimant. Lien claimant is entitled to know exactly what claims or liens Zenith
16 is attempting to consolidate. How else will lien claimant know whether common issues of law or
17 fact underlie those particular claims? It is self-evident that Zenith’s petition must be denied
18 based on its failure to comply with the governing statute.

19
20 **E. LIEN CLAIMANT WILL BE SEVERLY PREJUDICED IF THEIR LIENS ARE**
21 **CONSOLIDATED, AND WILL BE IRREPARABLY HARMED**
22 **IF A STAY IS ORDERED.**

23 To consolidate all compound medication liens would violate lien claimant’s due process

24
25 **NEW AGE PHARMACEUTICALS’ OBJECTION TO PETITION FOR BIFURCATION**
26 **AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**

1 rights. Lien claimants have substantial interests in these cases and have the unfettered right to be
2 heard at trial in order to protect the same. They have the right to adequate notice of issues to be
3 raised in *each particular case*, to receive copies of medical reports filed or introduced into
4 evidence pertaining to *each case* and to enter objections pertaining to same, and to offer evidence
5 and cross-examine witnesses with regard to threshold issues, medical necessity and
6 reasonableness. To consolidate all compound liens would thwart these fundamental rights.

7 Every applicant's case is different and lien claimants step in the shoes of the applicant for
8 purposes of litigating its lien. In fact, defendants often deny payment or offer nuisance value
9 settlements based on the facts of the underlying case. To deny lien claimants the right to litigate
10 the very issues raised by defendants to justify non-payment is patently prejudicial.

11 Even if some of the issues raised by Zenith were accepted as legitimate common issues
12 spanning across every lien, hearings would have to be held to address those issues, in addition to
13 threshold case-in-chief issues, which would not decrease the Court's docket, but would add to it.
14 Said increase would result in protracted litigation, further infringing on lien claimant's
15 fundamental right to be heard.

16 If the Court orders a stay as requested by Zenith, payments to lien claimants, even on
17 undisputed claims, will stop and lien claimants' business operations will be radically effected, if
18 not shutdown completely. Such a result would cause irreparable harm to lien claimants. In light
19 of Zenith's failure to cite how a consolidation would be judicially economical (nor list any
20 claims or facts common to those claims), and the consequential blow to lien claimants if a
21 consolidation or stay is ordered, when the former is taken into consideration with the latter,
22 consolidation cannot be granted and a stay cannot be placed in effect.

23
24
25 **NEW AGE PHARMACEUTICALS' OBJECTION TO PETITION FOR BIFURCATION**
26 **AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**F. CONSOLIDATION OF COMPOUND MEDICATION LIENS IS
NOT JUDICIALLY ECONOMICAL**

Most, if not all, compound medication liens exist with other treatment liens on the same case. Therefore, the same issues that pertain to all liens, such as Medical Provider Network issues, statute of limitation issues, etc. will apply to all lien claimants on the case. Separating the compound medication liens will add additional hearings to address the same issues as the other lien holders on the same case, which would be judicially *uneconomical*. In fact, partial consolidation of the compound liens could result in the very compound lien consolidated to be tried on other issues.

III. CONCLUSION

For the foregoing reasons, lien claimant respectfully requests no action be taken on Zenith’s petition for consolidation and request for stay of proceedings.

DATED: January 10, 2011

LAW OFFICES OF AINBINDER & PRATT



Michael D. Ainbinder
Colleen M. Pratt
Attorneys for Lien Claimant
NEW AGE PHARMACEUTICALS

PROOF OF SERVICE

1013 A(3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I declare that:

I am employed in the County of Los Angeles; I am over the age of 18, and am not a party to the within action. My business address is 5150 E. Pacific Coast Highway, Suite 720, Long Beach, CA 90804.

On January 12, 2011, I served the foregoing document described as **NEW AGE PHARMACEUTICALS' OBJECTION TO ZENITH INSURANCE COMPANY'S PETITION FOR BIFURCATION AND CONSOLIDATION OF COMPOUND PHARMACY LIENS** on all interested parties in this action by:

() **BY FACSIMILE TRANSMISSION:** From FAX no. (562) 498-4602 to the FAX numbers listed below. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(i), I caused the machine to print a record of the transaction.

(X) By placing a copy thereof in a sealed envelope addressed as follows:

CHERNOW & LIEB
PO BOX 9055
VAN NUYS, CA 91409

(X) By email to the following:

KStar@dir.ca.gov
MKahn@dir.ca.gov
JFrank@dir.ca.gov

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on the same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date on the envelope is more than one day after the date for mailing contained in this affidavit.

I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct. Executed on January 12, 2011 at Long Beach, California.



Malia Falaniko

**NEW AGE PHARMACEUTICALS' OBJECTION TO PETITION FOR BIFURCATION
AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**

Colleen M. Pratt (SBN 222770)s
Michael D. Ainbinder (SBN 56420)
LAW OFFICES OF AINBINDER & PRATT
5150 E. Pacific Coast Highway, Suite 720
Long Beach, CA 90804
TEL (562) 498-4600
FAX (562) 498-4602

Attorneys for LIEN CLAIMANT
NCL PHARMACEUTICAL, INC.

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

LUIS ARELLANO,

Applicant,

v.

SHERMAN OAKS AUTO RESORT;
STATE COMPENSATION INS. FUND,

Defendant,

NCL PHARMACEUTICALS, INC.

Lien Claimant.

EAMS NO. ADJ 2131629

**NCL PHARMACEUTICAL, INC.'S
OBJECTION TO ZENITH INSURANCE'S
PETITION FOR BIFURCATION AND
CONSOLIDATION OF COMPOUND
PHARMACY LIENS**

Lien claimant, NCL PHARMACEUTICALS, INC. (hereinafter "NCL"), by and through its attorneys of record, the Law Offices of Ainbinder & Pratt, presents the instant Objection to the Petition for Bifurcation and Consolidation filed by Zenith Insurance.

**NCL PHARMACEUTICAL INC.'S OBJECTION TO PETITION FOR BIFURCATION
AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

Since the onslaught of petitions to consolidate, there have been numerous petitions which claim the existence of common issues of law or fact, but fail to specifically cite any relevant issues, the consolidation of which would assist the WCAB in achieving its goal of expeditiously dealing with these liens.

Zenith’s petition is particularly troubling insofar as Zenith indicates “that the best option is to consolidate all compound pharmacy lien disputes for discovery and trial before a single WCJ...” yet only sets forth one example of a foreseeable common issue, i.e., “how the value of compound pharmacy liens should be calculated in the absence of a fee schedule.” It is clear the motivation to consolidate is fueled by cost-saving issues rather than out of concern for judicial resources. If Zenith and other insurance companies vying for consolidation were interested in conserving judicial resources, they would simply arrange for bulk settlement meetings, or better yet, settle the liens prior to lien claimants having to file Declarations of Readiness to Proceed.

Although Zenith lists three issues suitable for consolidation: 1) Proper qualification and licensing of the medical provider, 2) reasonable medical necessity, and 3) reasonable value, it does not elaborate on the first two. Responding party, however, will address all three issues raised by Zenith.

II. ARGUMENT

**A. THE COURT CANNOT CONSOLIDATE IN ORDER TO DETERMINE THE
VALUE OR REASONABLENESS OF THE COMPOUND MEDICATION**

With regard to reimbursement of medical treatment in general, *Labor Code* §5307.1 empowers the Administrative Director (AD) to adopt an official medical fee schedule (OMFS)

**NCL PHARMACEUTICAL INC.’S OBJECTION TO PETITION FOR BIFURCATION
AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**

1 that establishes reasonable maximum fees paid for medical services. The fees are in accordance
2 with the fee-related structure and rules of the relevant Medicare and Medi-Cal payment systems.

3 Although section 5307.1 envisions a comprehensive OMFS encompassing all services
4 authorized in *Labor Code* §4600, it does not limit insurance companies' liability to treatment
5 options actually covered by the OMFS. The exclusion or omission of certain modalities or
6 medical treatment, including compound medications, does not mean that they are not
7 reimbursable. Rather, there are established alternative methods of valuation espoused in
8 prevailing case law. (*See Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases
9 1588). Moreover, different lien claimants will have different evidence pertaining to their usual
10 and customary charges, which will create the need for separate litigation.
11

12 More importantly, however, if the intent of the consolidation is to determine the value of
13 certain raw ingredients or commonly dispensed creams, then such action would contravene the
14 role of the judiciary, violating the doctrine of separation of powers.
15

16 In any event, responding party, NCL, provides NDC numbers on its invoices which can
17 be entered into the DWC compound calculator in order to obtain values. A consolidation on this
18 issue is not necessary.
19

20 **B. THE ISSUE OF MEDICAL NECESSITY IS NOT AND CANNOT BE COMMON TO**
21 **ALL COMPOUND MEDICATION LIENS**
22

23 Medical necessity issues vary from applicant to applicant given the unique responsiveness
24

25 **NCL PHARMACEUTICAL INC.'S OBJECTION TO PETITION FOR BIFURCATION**
26 **AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**
27

1 of every person to particular medications. A consolidation on this issue is not only impractical,
2 but would be an inappropriate use of judicial resources. Such a determination is best left to
3 physicians who prescribe the medications based on their training, experience, and evaluation of
4 the applicants.

5 Further, the evidentiary requirements regarding medical necessity have been exhaustively
6 set forth in case law. Zenith fails to set forth which doctors, or compound medications, require
7 consolidation. Moreover, Zenith fails to cite a physician or medication common to all lien
8 claimants, let alone NCL, that would justify consolidation on this “common issue.” From a
9 practical standpoint, the issue of medical necessity will exist for all lien claimants on the case
10 (not just compounds), so separate litigation will still take place on the other liens regarding the
11 same issue.

12 Medical necessity simply cannot be common to all compound lien claimants, or even to all
13 NCL liens, because applicants have different mechanisms of injury, respond to treatment
14 differently, and will have different nature and extent issues. Any attempt to consolidate on the
15 issue of medical necessity undermines the very essence of consolidation, which is to find
16 common ground upon which to consolidate.

17
18 **C. NONE OF THE FACTORS SET FORTH IN CCR §10589 (Consolidation of**
19 **Cases) HAVE BEEN ADDRESSED IN ZENITH’S PETITION**

20
21 CCR 10589 reads, in pertinent part,

- 22 a) Consolidation of two or more related cases, involving either the same injured
23 employee or multiple injured employees, rests in the sound discretion of the

24
25 **NCL PHARMACEUTICAL INC.’S OBJECTION TO PETITION FOR BIFURCATION**
26 **AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**

1 Workers' Compensation Appeals Board. In exercising that discretion, the
2 Workers' Compensation Appeals Board shall take into consideration any relevant
3 factors, including but not limited to the following:
4 (1) whether there are common issues of fact or law;
5 (2) the complexity of the issues involved;
6 (3) the potential prejudice to any party, including but not limited to whether
7 granting consolidation would significantly delay the trial of any of the cases
8 involved;
9 (4) the avoidance of duplicate or inconsistent orders; and
10 (5) the efficient utilization of judicial resources.

11 Zenith failed to state one fact or law common to all lien claimants (the identities of which
12 are unknown.) In general fashion, Zenith lists “proper qualification and licensing of the medical
13 provider”, but cites no evidence or gives any basis for its assertion that licensing, or lack thereof,
14 is such a prominent issue so as to require consolidation on this issue.

15 Zenith further fails to indicate how consolidation will help avoid duplicate or inconsistent
16 orders, how consolidation on a common issue or fact would be an efficient utilization of judicial
17 resources, or what the issues involved are so complex that the entire class of compounds need to
18 be consolidated.

19 ///

20 ///

21 ///

22 ///

23 ///

24

25 **NCL PHARMACEUTICAL INC.’S OBJECTION TO PETITION FOR BIFURCATION**
26 **AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**

26

27

28

1 **D. ZENITH’S PETITION IS DEFECTIVE ON ITS FACE. CCR 10589 REQUIRES THE**
2 **PETITION TO CONTAIN THE ADJUDICATION CASE NUMBERS OF ALL THE**
3 **CASES SOUGHT TO BE CONSOLIDATED.**

4 CCR 10589 (b) reads:

5 “Consolidation may be ordered by the Workers' Compensation Appeals Board on
6 its own motion, or may be ordered based upon a petition filed by one of the
7 parties. A petition to consolidate shall:

8 (1) List all named parties in each case;

9 (2) Contain the adjudication case numbers of all the cases sought to be
10 consolidated, with the lowest numbered case shown first;

11 (3) Be filed in each case sought to be consolidated; and

12 (4) Be served on all attorneys or other representatives of record and on all non-
13 represented parties in each case sought to be consolidated. (Emphasis added)

14 Here, Zenith only lists the master case under which it files the petition and fails to list any
15 other case or lien claimant. Lien claimant is entitled to know exactly what claims or liens Zenith
16 is attempting to consolidate. How else will lien claimant know whether common issues of law or
17 fact underlie those particular claims? It is self-evident that Zenith’s petition must be denied
18 based on its failure to comply with the governing statute.

19
20 **E. LIEN CLAIMANT WILL BE SEVERLY PREJUDICED IF THEIR LIENS ARE**
21 **CONSOLIDATED, AND WILL BE IRREPARABLY HARMED**
22 **IF A STAY IS ORDERED.**

23 To consolidate all compound medication liens would violate lien claimant’s due process

24
25 **NCL PHARMACEUTICAL INC.’S OBJECTION TO PETITION FOR BIFURCATION**
26 **AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**

1 rights. Lien claimants have substantial interests in these cases and have the unfettered right to be
2 heard at trial in order to protect the same. They have the right to adequate notice of issues to be
3 raised in *each particular case*, to receive copies of medical reports filed or introduced into
4 evidence pertaining to *each case* and to enter objections pertaining to same, and to offer evidence
5 and cross-examine witnesses with regard to threshold issues, medical necessity and
6 reasonableness. To consolidate all compound liens would thwart these fundamental rights.

7 Every applicant's case is different and lien claimants step in the shoes of the applicant for
8 purposes of litigating its lien. In fact, defendants often deny payment or offer nuisance value
9 settlements based on the facts of the underlying case. To deny lien claimants the right to litigate
10 the very issues raised by defendants to justify non-payment is patently prejudicial.

11 Even if some of the issues raised by Zenith were accepted as legitimate common issues
12 spanning across every lien, hearings would have to be held to address those issues, in addition to
13 threshold case-in-chief issues, which would not decrease the Court's docket, but would add to it.
14 Said increase would result in protracted litigation, further infringing on lien claimant's
15 fundamental right to be heard.

16 If the Court orders a stay as requested by Zenith, payments to lien claimants, even on
17 undisputed claims, will stop and lien claimants' business operations will be radically effected, if
18 not shutdown completely. Such a result would cause irreparable harm to lien claimants. In light
19 of Zenith's failure to cite how a consolidation would be judicially economical (nor list any
20 claims or facts common to those claims), and the consequential blow to lien claimants if a
21 consolidation or stay is ordered, when the former is taken into consideration with the latter,
22 consolidation cannot be granted and a stay cannot be placed in effect.

23
24
25 **NCL PHARMACEUTICAL INC.'S OBJECTION TO PETITION FOR BIFURCATION**
26 **AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**F. CONSOLIDATION OF COMPOUND MEDICATION LIENS IS
NOT JUDICIALLY ECONOMICAL**

Most, if not all, compound medication liens exist with other treatment liens on the same case. Therefore, the same issues that pertain to all liens, such as Medical Provider Network issues, statute of limitation issues, etc. will apply to all lien claimants on the case. Separating the compound medication liens will add additional hearings to address the same issues as the other lien holders on the same case, which would be judicially *uneconomical*. In fact, partial consolidation of the compound liens could result in the very compound lien consolidated to be tried on other issues.

III. CONCLUSION

For the foregoing reasons, lien claimant respectfully requests no action be taken on Zenith’s petition for consolidation and request for stay of proceedings.

DATED: January 10, 2011

LAW OFFICES OF AINBINDER & PRATT



Michael D. Ainbinder
Colleen M. Pratt
Attorneys for Lien Claimant
NCL PHARMACEUTICALS, INC.

PROOF OF SERVICE

1013 A(3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I declare that:

I am employed in the County of Los Angeles; I am over the age of 18, and am not a party to the within action. My business address is 5150 E. Pacific Coast Highway, Suite 720, Long Beach, CA 90804.

On January 12, 2011, I served the foregoing document described as **NCL PHARMACEUTICALS, INC.'S OBJECTION TO ZENITH INSURANCE COMPANY'S PETITION FOR BIFURCATION AND CONSOLIDATION OF COMPOUND PHARMACY LIENS** on all interested parties in this action by:

() **BY FACSIMILE TRANSMISSION:** From FAX no. (562) 498-4602 to the FAX numbers listed below. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(i), I caused the machine to print a record of the transaction.

(X) By placing a copy thereof in a sealed envelope addressed as follows:

CHERNOW & LIEB
PO BOX 9055
VAN NUYS, CA 91409

(X) By email to the following:

KStar@dir.ca.gov
MKahn@dir.ca.gov
JFrank@dir.ca.gov

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on the same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date on the envelope is more than one day after the date for mailing contained in this affidavit.

I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct. Executed on January 12, 2011 at Long Beach, California.



Malia Falaniko

**NCL PHARMACEUTICAL INC.'S OBJECTION TO PETITION FOR BIFURCATION
AND CONSOLIDATION OF COMPOUND PHARMACY LIENS**

JERILYN COHEN, 94632
SCOLL & ASSOCIATES
100 W. BROADWAY, SUITE 1050
GLENDALE, CA 91210
PHONE: (818) 502-6442
FAX: (818) 502-6415

ATTORNEY FOR DEFENDANTS
THE TRAVELERS INDEMNITY COMPANY
AND ITS SUBSIDIARY AND AFFILIATE COMPANIES

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

LUIS ARELLANO, et. al.

Applicant,

vs.

SHERMAN OAKS AUTO RESORT;
STATE COMPENSATION INSURANCE
FUND, et al.

Defendants.

EAMS No.: ADJ2131629 LEAD

**AMENDED PETITION FOR
BIFURCATION AND
CONSOLIDATION RE: COMPOUND
PHARMACY LIENS
Title 8, Sec. 10589**

Comes now THE TRAVELERS INDEMNITY COMPANY AND ITS SUBSIDIARY
AND AFFILIATE COMPANIES to amend the Petition for Consolidation of Compound
Pharmacy Liens dated October 28, 2010 to Join the following cases, each with a lien filed by a
compound pharmacy or its representative:

1. <i>Maria Arias v. Mission Linen Supply</i>	ADJ01478489,0147488	Claim:CBC0582
Lien: California Pharmacy Management	Amount: \$5789.89	
2. <i>Rafael Arranda v. Famsa</i>	ADJ 3560265	Claim:CHP7928
Lien: New Age Pharmaceutical	Amount \$593.78	
3. <i>Frank Cannova v. J&J Snack Foods</i>	ADJ6748508	Claim:A5T5179
Lien: Mumtaz Ali, MD	Amount: \$763.32	

1	4. <i>Juventino Carranza vs. Indalex, Inc.</i>	ADJ3950458	Claim: CBC4164
2	Lien: BCP Collections for Medical Recovery Gardena	Amount: \$29873.49	
3	5. <i>Maria Carrillo vs. Mission Linen Supply</i>	ADJ2488420	Claim: CDA1755
4	Lien: PHYMED, INC.	Amount: \$191.92	
5	6. <i>Patricia Casey vs. Downey Financial Corp.</i>	ADJ3779890	Claim: VBA4497
6	Lien: Life Pharmaceuticals	Amount: \$184.80	
7	7. <i>Irma Gonzales vs. CKE Restaurants</i>	ADJ2168687	Claim: CHP9149
8	Lien: Priority First Professional Services Inc.	Amount: \$1171.80	
9	8. <i>Paul Hatfield vs. J.Paul Getty Trust</i>	ADJ2554390	Claim: FZS4733
10	Lien: DNM Pharmacy	Amount: \$4690.68	
11	9. <i>Florencia Hernandez vs. CTI Foods Holding Co.</i>	ADJ7250424	Claim: A4A1834
12	Lien Claimant: Physicians Funding	Amount: \$2381.40	
13	10. <i>Maria Hernandez vs. Vanguard Health System, Inc</i>	ADJ2544760	Claim CFC0519
14	Lien: RX Financing Solutions LLC for Costa Mesa Pharmacy, under Landmark Medical		
15	Management	Amount: \$3,204.0	
16	Lien: PharmaFinance LLC for Curt's Compounding Pharmacy	Amount: \$3,308	
17	11. <i>William Hernandez vs. Siemens Corp.</i>	ADJ3295137	Claim: B5E9699
18	Lien: NEPAC Providers LLC	Amount: \$544.69	
19	Lien: Daniel Capen, M.D.	Amount: \$14,283.50	
20	12. <i>Isabel Medina vs. Belmont Village</i>	ADJ7327404	Claim: A4A9172
21	Lien: NCL Pharmaceuticals	Amount: \$1240.66	
22	13. <i>Karina Montes vs. CKE Restaurants</i>	ADJ6753456	Claim: A5T4140
23	Lien: Ronco Drug Pharmacy DBA United Service Plus	Amount: \$2125.38	
24	14. <i>Augusto Paez vs. Nbt, Inc.</i>	ADJ4406135	Claim: A7T0618
25	Lien: Physician Funding Solutions, LLC	Amount: \$3746.00	
26	15. <i>Roberto Pena vs. National Construction Rentals</i>	ADJ765460	Claim: A9M1791
27	Lien: Landmark Medical Management for Tushar Doshi Huntington Park	Amount: \$552.30	
28	16. <i>Ramon Penaloza vs. Spencer Reed Group, Inc.</i>	ADJ655422	Claim: CDA6423
	Lien: Express Pharmacy	Amount: \$908.00	
	Lien: Rx Financing, Inc. for Stevens Pharmacy and Compounding Center	Amount: \$990.00	
	Lien: Rx Financing, Inc. for Living Well Pharmacy Inc. dba HNP	Amount: \$1120.54	
	17. <i>Jose J. Ramirez v. Esselte Holdings, Inc.</i>	ADJ596112	Claim: CHP6946
	Lien: Express Pharmacy	Amount: \$908.00	

1 18. *Osbaldo Reyes* vs.
2 Lien: KG Pharmacy Amount: \$10,914.54

ADJ6617673

Claim: CBU5209

3 19. *Oudy Wall* vs. *Stewart Enterprises*
4 Lien: Valderwood Pharmacy Amount: \$339.69

ADJ1777714

Claim: ANW7048

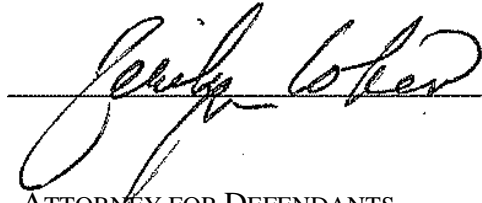
5 **CONCLUSION**

6 THE TRAVELERS INDEMNITY COMPANY AND ITS SUBSIDIARY AND
7 AFFILIATE COMPANIES pray that these cases be joined to the consolidated litigation.

8 Dated: December 22, 2010

Respectfully Submitted,

9 SCOLL & ASSOCIATES

10 
11

12 ATTORNEY FOR DEFENDANTS,
13 The Travelers Indemnity Company and
14 its Subsidiary and Affiliate Companies
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EAMS NAME: SCOLL ASSOCIATES GLENDALE
EAMS Administrator: Debra Casey
Phone Number: (818) 502-6427
EAMS Admin Email: DDCasey@Travelers.com

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California.

I am over the age of 18 years and not a party to the within action; my business address is:
100 W. Broadway, Suite 1050, Glendale, CA 91210.

On the date executed below, I served the document(s) described as:

**AMENDED PETITION FOR BIFURCATION AND CONSOLIDATION
RE: COMPOUND PHARMACY LIENS Title 8, Sec. 10589**

on interested parties in this action by placing the original or a true copy thereof enclosed in a
sealed envelope addressed as follows:

See attached Mailing List

{X} (BY MAIL) I placed such envelope with postage thereon fully prepaid in the United
States mail at Glendale, California.

{ } (BY FACSIMILE) I served such document(s) by fax to the fax number provided by each
of the parties in this litigation at Glendale, California. I received a confirmation sheet
indicating said fax was transmitted completely.

I am "readily familiar" with the firm's practice of collection and processing
correspondence for mailing. Under that practice it would be deposited with U.S. postal service
on that same day with postage thereon fully prepared at Glendale, California in the ordinary
course of business. I am aware that on motion of the party served, service is presumed invalid if
postal cancellation date or postage meter date is more than one day after the date of deposit for
mailing in affidavit.

I declare under penalty of perjury that the foregoing is true and correct. Executed at
Glendale, California.

E-Filing Date: _____ Service Date: December, 2010

Evelyn Stevens

1 Re: LUIS ARELLANO, et al. vs. SHERMAN OAKS AUTO RESORT, et al.
2 Case No.: ADJ2131629 LEAD

3
4 **MAILING LIST**

5 Workers' Compensation Appeals Board
6 **[E-Filed]**

7 California Pharmacy Management
8 20377 SW Acacia Street, Suite 200
9 Newport Beach, CA 92660

10 New Age Pharmaceutical
11 1147 South Beverly Drive, #B
12 Los Angeles, CA 90035

13 Ali Mumtaz, M.D.
14 7439 La Palma Avenue #302
15 Buena Park, CA 90620

16 BCP Collections for
17 Medical Recovery Gardena
18 1303 W. 149th Street
19 Gardena, CA 90247

20 PHYMED, INC.
21 137 E. Thousand Oaks Blvd.
22 Thousand Oaks, CA 91360

23 Life Pharmaceuticals
24 P. O. Box 6824
25 Fullerton, CA 92834

26 Priority First Professional Services, Inc.
27 250 E. Caroline Street, #D
28 San Bernardino, CA 92408

DNM Pharmacy
6221 Wilshire Blvd.
Los Angeles, CA 90048

Physicians Funding
12223 Highland Avenue No. 106-560
Rancho Cucamonga, CA 91739

1 Pharma Finance LLC for
2 Curt's Compounding Pharmacy
3 18134 Mt. Washington Street
Fountain Valley, CA 92708

4 NEPAC Providers LLC
5 381 Van Ness Avenue #1510
6 Torrance, CA 90501

7 Daniel Capen, M.D.
8 7700 Imperial Hwy
Downey, CA 90242

9 NCL Pharmaceuticals
10 440 W. Broadway
Glendale, CA 91204

11 Ronco Drug Pharmacy dba
12 United Service Plus
13 18607 Ventura Blvd., #109
Tarzana, CA 91356

14 Physician Funding Solutions, LLC
15 12223 Highland Avenue No. 106-560
16 Rancho Cucamonga, CA 91739

17 Landmark Medical Management for Tushar
18 Doshi Huntington Park
3200 Inland Empire Blvd. #265
19 Ontario, CA 91764

20 Express Pharmacy
21 c/o Express Case Management
22 Post Office Box 2240
Monrovia, CA 91017-2240

23 Rx Financing, Inc. for Stevens Pharmacy and
24 Compounding Center
79 Daily Drive Ste 301
25 Camarillo, CA 93010

26 Rx Financing, Inc. for Living Well Pharmacy
27 Inc. dba HNP
79 Daily Drive #Ste 301
28 Camarillo, CA 9301

1	Express Pharmacy
2	c/o Express Case Mgt.
3	P. O. Box 2240
	Monrovia, CA 91017
4	KG Pharmacy
5	8956 Ellis Avenue
	Los Angeles, CA 90034
6	Valderwood Pharmacy
7	381 Van Ness Avenue #1510
8	Torrance, CA 90501
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

Colleen M. Pratt (SBN 222770)
Michael D. Ainbinder (SBN 56420)
LAW OFFICES OF AINBINDER & PRATT
5150 E. Pacific Coast Highway, Suite 720
Long Beach, CA 90804
TEL (562) 498-4600
FAX (562) 498-4602

Attorneys for LIEN CLAIMANT
NEW AGE PHARMACEUTICALS

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARGARITA MEZA DE RUBIO,

Applicant,

v.

NEWPORT APPAREL CORPORATION;
STATE COMPENSATION INS. FUND,

Defendant,

NEW AGE PHARMACEUTICALS

Lien Claimant.

EAMS NO. 05527158 (MASTER FILE)

**NEW AGE PHARMACEUTICAL'S
OBJECTION TO STATE
COMPENSATION INSURANCE FUND'S
PETITION FOR CONSOLIDATION AND
STAY RE: COMPOUND MEDICATION
LIENS**

Lien claimant, NEW AGE PHARMACEUTICALS (hereinafter "New Age"), by and through its attorneys of record, the Law Offices of Ainbinder & Pratt, presents the instant Objection to the Petition for Consolidation and Request for Stay filed by State Compensation Insurance Fund (hereinafter "SCIF").

**NEW AGE PHARMACEUTICAL'S OBJECTION TO PETITION FOR
CONSOLIDATION AND STAY RE: COMPOUND MEDICATION LIENS**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

SCIF’s petition to consolidate the liens of New Age is nothing more than a unilateral request for discovery from various compound pharmacies and billing companies regarding numerous unidentified liens. It lists twelve separate “discovery issues”, yet does not provide the opportunity for New Age, or any other lien claimant, to obtain “reasonable discovery” from SCIF with reference to denials, defenses, reductions, etc. Further, SCIF contends the purpose of this one-way discovery is for settlement negotiation. However, if SCIF truly wanted to settle these liens, they would simply request a bulk settlement offered by the LA WCAB. SCIF could also just as easily call New Age and ask whether they’re interested in bulk settling. SCIF has made no such attempts.

Additionally, SCIF’s petition fails to address a single factor pursuant to CCR 10589, the statute governing consolidation. Specifically, SCIF fails to list a common issue of fact or law common to all the liens, let alone to the liens of New Age; fails to identify how the issues involved are of such a complex nature so as to require consolidation; how consolidation will help avoid duplicate or inconsistent orders; how consolidation of compound liens will be an efficient utilization of judicial resources; and finally, SCIF completely and conveniently overlooks the extraordinary prejudice to lien claimants.

SCIF’s petition flies in the face of logic. Even if one accepts the twelve questions posed by SCIF as common to the entire class, the sheer number of issues suggests a diversity of, rather than common, issues of fact or law. Not all compound pharmaceutical pharmacies or billing companies (let alone every lien filed by them) will share common issues. In fact, the various lien claimants named by the LA WCAB and listed in SCIF’s petition, do not receive the same prescriptions from the same treating physicians, do not dispense the same medications, and

1 dispense to different applicants based on individual medical needs. To assert that there are
2 common issues underlying the *entire* class is disingenuous at best. Further, New Age bills
3 differently than other compounding lien claimants insofar as they utilize NDC numbers
4 recognized by the Medi-Cal database and values are easily calculated utilizing the Division of
5 Workers' Compensation website.

6 Consolidation will not assist SCIF (nor the WCAB) in resolving these liens. Even though
7 SCIF contends the WCAB's "inadequate funding and a depletion of qualified personnel"
8 necessitates consolidation, the reality is, consolidation will increase the Board's workload.
9 Assuming *arguendo* there are common issues of fact, there will necessarily be threshold issues
10 pertaining to the case in chief that cannot be consolidated due to the different legal issues
11 presented in each case. These issues will also require litigation and will defeat the purpose of
12 consolidation.

13 It seems as if SCIF is attempting to use consolidation as a guise to further delay negotiation
14 and resolution of liens. They are requesting a stay of all proceedings including "suspension of
15 actions to bring liens to Conference and/or Trial as well as cancellation of trials on lien-related
16 issues that are already established." If SCIF's request for a stay is granted, settlement
17 negotiations will come to a screeching halt, and parties will be unable to meet face-to-face at
18 conferences and trials in order to negotiate, settle, and dispose of the very liens they claim are
19 burdening the system.

20 Further, many of the discovery issues listed by SCIF can just as easily, and without causing
21 further delay, protracted litigation, and infringement of lien claimants' due process rights, be
22 dealt with through traditional means rather than by way of consolidation. Again, if settlement is
23 SCIF's goal, consolidation efforts are not needed. Simply arrange for a bulk settlement meeting.

24
25 **NEW AGE PHARMACEUTICAL'S OBJECTION TO PETITION FOR**
26 **CONSOLIDATION AND STAY RE: COMPOUND MEDICATION LIENS**

1 A stay would have a devastating effect on lien claimants who have substantial interests at
2 stake and who rely upon the WCAB to safeguard **all** parties' rights, including lien claimants. If
3 defendants and insurance companies were able to consolidate and stay all proceedings with
4 regard to a particular class of liens simply due to the alleged volume (which, incidentally, is not
5 significant as compound liens only comprise 10% of total liens filed), or because the liens
6 present reimbursement issues or other discovery issues, the result would be a complete
7 abdication of lien claimants' rights. Their rights to conduct discovery on each case, to be heard
8 at trial in order to refute defenses, and to prove the value of the lien would be abolished.

9 Even if compound liens alone do create an administrative toll as alleged by SCIF and the
10 LA WCAB (which is inconsistent with the actual statistics), consolidating them would so
11 severely violate lien claimants' due process and equal protection rights, that any petition to
12 consolidate must be denied to protect the same. Nevertheless, even if the Court opines that the
13 interests of judicial economy outweigh the rights of parties, there is no conceivable law or fact
14 common to every compound medication lien to justify consolidation.

15 Accordingly, and for the reasons cited *infra*, NEW AGE objects to SCIF's Petition for
16 Consolidation and Request for Stay of Proceedings.

18 **II. ARGUMENT**

19 **A. SCIF CITES NO COMMON ISSUES OF LAW OR FACT** 20 **TO SUPPORT ITS PETITION**

21 SCIF does not cite any common issues of law or fact pertaining to New Age's liens.
22 Rather, it generally lists twelve questions relating to discovery issues presumably regarding all
23 named lien claimants. The first is whether the pharmacy has been properly licensed. First off,
24

25 **NEW AGE PHARMACEUTICAL'S OBJECTION TO PETITION FOR** 26 **CONSOLIDATION AND STAY RE: COMPOUND MEDICATION LIENS**

1 the list of lien claimants in the petition includes pharmacies and billing companies, so this query
2 doesn't even apply to all of them. Secondly, there is no evidence or support to suggest that
3 licensing is an issue across all these lien claimants. Further, whether a particular company has a
4 proper license is something SCIF may ask at any time. To imply that this issue is so grand so as
5 to require mass consolidation is an exaggeration. In fact, if SCIF asked NEW AGE for its
6 license, the same would be provided, and that issue would be mute.

7 The second query is equally puzzling – whether a contract rate exists between SCIF and
8 the pharmacy. SCIF can search its own database to answer its own question. A consolidation
9 based on this issue makes no sense.

10 The third query is whether the medications identified by the WCAB constitute compound
11 drugs which are exempt from FDA regulations. This question can also be resolved without the
12 need for consolidation.

13 The fourth question is whether the “medical doctor adequately explained the necessities of
14 a ‘compound’ through the prescription and medical reports.” (SCIF Petition, Page 4, lines 10-
15 11). This issue is better known as “medical necessity”. The evidentiary requirements regarding
16 medical necessity have been exhaustively set forth in case law. Furthermore, which doctor or
17 doctors is SCIF referring to? SCIF fails to cite a physician common to all lien claimants, let
18 alone New Age, that would justify consolidation on this “common issue.” Moreover, from a
19 practical standpoint, the issue of medical necessity will exist for all lien claimants on the case
20 (not just compounds), so separate litigation will still take place on the other liens regarding the
21 same issue.

22 Additionally, medical necessity cannot possibly be common to all targeted lien claimants,
23 or even to all New Age liens, because applicants have different mechanisms of injury, respond to

24
25 **NEW AGE PHARMACEUTICAL’S OBJECTION TO PETITION FOR**
26 **CONSOLIDATION AND STAY RE: COMPOUND MEDICATION LIENS**

1 treatment differently, and will have different nature and extent issues. Any attempt to
2 consolidate on the issue of medical necessity undermines the very essence of consolidation,
3 which is to find common ground upon which to consolidate. There can be no commonality with
4 regard to this issue.

5 The fifth query, “[w]ho actually performs the compounding function”, is a non-issue. The
6 compensability of the lien does not depend on this information, nor does this information help
7 assist in the resolution of the liens. SCIF’s actions resemble more of a fishing expedition rather
8 than a genuine attempt to ascertain pertinent information to facilitate negotiation and resolution.

9 The sixth query is equally irrelevant and not calculated to lead to the discovery of
10 admissible evidence whether at a consolidation or individual hearing. SCIF wants to know the
11 source and cost of the components involved in the compounding. SCIF is not entitled to this
12 information.

13 The seventh query pertains to Utilization Review (UR). SCIF essentially wants to know
14 whether the prescribing physician went through proper UR channels. It is axiomatic that this
15 issue will vary from provider to provider. There is no common denominator here. SCIF just
16 makes a general query but gives no indication how this issue is common to all of New Age’s
17 liens. To say consolidation cannot be achieved on this issue is an understatement.

18 The eighth query is “[w]hat is the reasonable value of the compounded medications.”
19 Even though New Age bills pursuant to the values listed on the DWC website, there are other
20 lien claimants whose charges fall outside the scope of the DWC website and do not have readily
21 accessible values. Therefore, this issue is not common to all targeted lien claimants. In any
22 event, a consolidation with reference to New Age is certainly unnecessary as the reasonable
23 value is easily ascertainable.

24
25 **NEW AGE PHARMACEUTICAL’S OBJECTION TO PETITION FOR**
26 **CONSOLIDATION AND STAY RE: COMPOUND MEDICATION LIENS**

1 The ninth question posed by SCIF is whether lien claimant's itemization provides adequate
2 information to determine reasonableness. Again, not all listed lien claimants bill the same for the
3 same medications and ingredients. This is not an issue on which ALL compound liens can be
4 consolidated.

5 The tenth query is nonsensical. It asks whether the date of service is prior to 3/1/07 with
6 regard to application of CCR 9789.40. This question can be resolved by looking at the bill in
7 question. Consolidation is not needed.

8 The eleventh query asks whether "the provider complied with reg CCR 1716.1 in regards
9 (sic) to 72 hours samples and whether a proper follow up prescription has been supplied." Again,
10 SCIF fails to cite any evidence or list any physician, billing company or pharmacy to justify its
11 belief that this is a common issue underlying all the liens.

12 Finally, SCIF asks whether the lien claimant asserts any other claims for reimbursement
13 other than compound medications. This query has nothing to do with the purpose and
14 requirements of consolidation and will not be elaborated upon in the interests of brevity.

15
16 **B. NONE OF THE FACTORS SET FORTH IN CCR §10589 (Consolidation of**
17 **Cases) HAVE BEEN ADDRESSED IN SCIF'S PETITION**

18 CCR 10589 reads, in pertinent part:

19 a) Consolidation of two or more related cases, involving either the same injured
20 employee or multiple injured employees, rests in the sound discretion of the
21 Workers' Compensation Appeals Board. In exercising that discretion, the
22 Workers' Compensation Appeals Board shall take into consideration any relevant
23 factors, including but not limited to the following:

24
25 **NEW AGE PHARMACEUTICAL'S OBJECTION TO PETITION FOR**
26 **CONSOLIDATION AND STAY RE: COMPOUND MEDICATION LIENS**

- (1) whether there are common issues of fact or law;
- (2) the complexity of the issues involved;
- (3) the potential prejudice to any party, including but not limited to whether granting consolidation would significantly delay the trial of any of the cases involved;
- (4) the avoidance of duplicate or inconsistent orders; and
- (5) the efficient utilization of judicial resources.

Again, SCIF failed to state one fact or law common to New Age or all lien claimants. Further, according to SCIF, there are no complex issues involved – just the need for discovery regarding items SCIF deems relevant and necessary to “assess the risk of litigation” (SCIF Petition, Page 3, line 18). SCIF further fails to indicate how consolidation will help avoid duplicate or inconsistent orders, or how consolidation on a common issue or fact (assuming SCIF named one, which it did not), would be an efficient utilization of judicial resources. In boilerplate fashion, SCIF contends, “[c]onsolidation allows the [WCAB] to avoid multiple trials on the same issue and with the same parties, and to provide a more consistent outcome” (SCIF Petition, Page 5, lines 9-11), but fails to indicate how or on what issue. This is insufficient.

The third factor -- potential prejudice to a party, and whether granting consolidation would significantly delay the trial of any of the cases involved was also not addressed by SCIF, but will be discussed *infra*.

The purpose and requirements of consolidation seem to have been lost. It is not a tool to round up disliked liens in order to conduct unilateral discovery. Nor is it a tool for SCIF to use to assess the risks of litigation. Such a risk is borne by all parties – it is part of the adjudication process and becomes clearer as the case moves toward trial. Use of consolidation in this manner

**NEW AGE PHARMACEUTICAL’S OBJECTION TO PETITION FOR
CONSOLIDATION AND STAY RE: COMPOUND MEDICATION LIENS**

1 is inappropriate.

2
3 **C. SCIF’S PETITION IS DEFECTIVE ON ITS FACE. CCR 10589 REQUIRES THE**
4 **PETITION TO CONTAIN THE ADJUDICATION CASE NUMBERS OF ALL THE**
5 **CASES SOUGHT TO BE CONSOLIDATED.**

6 CCR 10589 (b) reads:

7 “Consolidation may be ordered by the Workers' Compensation Appeals Board on
8 its own motion, or may be ordered based upon a petition filed by one of the
9 parties. A petition to consolidate **shall**:

10 (1) List all named parties in each case;

11 (2) Contain the adjudication case numbers of all the cases sought to be
12 consolidated, with the lowest numbered case shown first;

13 (3) Be filed in each case sought to be consolidated; and

14 (4) Be served on all attorneys or other representatives of record and on all non-
15 represented parties in each case sought to be consolidated. (Emphasis added)

16 Here, SCIF only lists the master case under which it filed the petition and fails to list any
17 other case on which New Age or any other lien claimant filed liens. In its petition, SCIF agrees
18 to provide a list of claims to the WCAB when discovery regarding identification of all claims is
19 completed. However, the time is now. New Age is entitled to know exactly what claims or liens
20 SCIF is attempting to consolidate. How else will New Age know whether common issues of law
21 or fact underlie those particular claims?

22 It is self-evident that SCIF’s petition must be denied based on its failure to comply with
23 the governing statute.

24
25 **NEW AGE PHARMACEUTICAL’S OBJECTION TO PETITION FOR**
26 **CONSOLIDATION AND STAY RE: COMPOUND MEDICATION LIENS**

**D. LIEN CLAIMANT WILL BE SEVERLY PREJUDICED IF THEIR LIENS ARE
CONSOLIDATED, AND WILL BE IRREPARABLY HARMED
IF A STAY IS ORDERED.**

To consolidate all compound medication liens would violate New Age's due process rights. New Age has substantial interests in these cases and has the unfettered right to be heard at trial in order to protect the same. They have the right to adequate notice of issues to be raised in *each particular case*, to receive copies of medical reports filed or introduced into evidence pertaining to *each case* and to enter objections pertaining to same, and to offer evidence and cross-examine witnesses with regard to threshold issues, medical necessity and reasonableness. To consolidate all compound liens would thwart these fundamental rights.

Every applicant's case is different and lien claimants step in the shoes of the applicant for purposes of litigating its lien. In fact, defendants often deny payment or offer nuisance value settlements based on the facts of the underlying case. To deny lien claimants the right to litigate the very issues raised by defendants to justify non-payment is patently prejudicial.

Even if some of the queries raised by SCIF were accepted as legitimate common issues spanning across every lien, hearings would have to be held to address those issues, in addition to threshold case-in-chief issues, which would not decrease the Court's docket, but would add to it. Said increase would result in protracted litigation, further infringing on lien claimant's fundamental right to be heard.

If the Court orders a stay as requested by SCIF (on all proceedings), payments to New Age, even on undisputed claims, will stop and New Age's business operations will be radically effected, if not shutdown completely. Such a result would cause irreparable harm to New Age. In light of SCIF's failure to cite how a consolidation would be judicially economical (nor list any

**NEW AGE PHARMACEUTICAL'S OBJECTION TO PETITION FOR
CONSOLIDATION AND STAY RE: COMPOUND MEDICATION LIENS**

claims or facts common to those claims), and the consequential blow to New Age if a consolidation or stay is ordered, when the former is taken into consideration with the latter, consolidation cannot be granted and a stay cannot be placed in effect.

**E. CONSOLIDATION OF COMPOUND MEDICATION LIENS IS
NOT JUDICIALLY ECONOMICAL**

Most, if not all, compound medication liens exist with other treatment liens on the same case. Therefore, the same issues that pertain to all liens, such as Medical Provider Network issues, statute of limitation issues, etc. will apply to all lien claimants on the case. Separating the compound medication liens will add additional hearings to address the same issues as the other lien holders on the same case, which would be judicially *uneconomical*. In fact, partial consolidation of the compound liens could result in the very compound lien consolidated to be tried on other issues.

III. CONCLUSION

For the foregoing reasons, New Age respectfully requests no action be taken on SCIF's petition for consolidation and request for stay of proceedings.

DATED: December 28, 2010

LAW OFFICES OF AINBINDER & PRATT



Michael D. Ainbinder
Colleen M. Pratt
Attorneys for Lien Claimant
NEW AGE PHARMACEUTICALS

**NEW AGE PHARMACEUTICAL'S OBJECTION TO PETITION FOR
CONSOLIDATION AND STAY RE: COMPOUND MEDICATION LIENS**

PROOF OF SERVICE

1013 A(3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I declare that:

I am employed in the County of Los Angeles; I am over the age of 18, and am not a party to the within action. My business address is 5150 E. Pacific Coast Highway, Suite 720, Long Beach, CA 90804.

On December 29, 2010 I served the foregoing document described as **NEW AGE PHARMACEUTICAL'S OBJECTION TO STATE COMPENSATION INSURANCE FUND'S PETITION FOR CONSOLIDATION AND STAY RE: COMPOUND MEDICATION LIENS** on all interested parties in this action by:

() **BY FACSIMILE TRANSMISSION:** From FAX no. (562) 498-4602 to the FAX numbers listed below. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(i), I caused the machine to print a record of the transaction.

(X) By placing a copy thereof in a sealed envelope addressed as follows:

Robert A. Wilson, Esq.
State Compensation Insurance Fund
655 North Central Ave., Suite 400
Glendale, CA 91203-1400

(X) By email to the following:

KStar@dir.ca.gov
MKahn@dir.ca.gov
JFrank@dir.ca.gov

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on the same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date on the envelope is more than one day after the date for mailing contained in this affidavit.

I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct. Executed on December 29, 2010 at Long Beach, California.



Malia Falaniko

**NEW AGE PHARMACEUTICAL'S OBJECTION TO PETITION FOR
CONSOLIDATION AND STAY RE: COMPOUND MEDICATION LIENS**

1 Drew E. Pomerance, Esq. (SBN 101239)
2 David R. Ginsburg, Esq. (SBN 210900)
3 **ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP**
4 5820 Canoga Avenue, Suite 250
5 Woodland Hills, California 91367
6 Telephone: (818) 992-9999
7 Facsimile: (818) 992-9991
8
9 Attorneys for Lien Claimant
10 **FRONTLINE MEDICAL ASSOCIATES, INC.**

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

11 **LUIS ARELLANO,**

12 *Applicant,*

13 vs.

14 **SHERMAN OAKS AUTO RESORT**
15 **SCIF**

ADJ2131629 lead case

**LIEN CLAIMANT FRONTLINE MEDICAL
ASSOCIATES, INC.'S
LIMITED OPPOSITION TO
CONSOLIDATION AND STAY OF ALL
COMPOUND PHARMACEUTICAL LIEN
PROCEEDINGS**

16
17
18 TO THE HONORABLE BOARD, ALL PARTIES, AND TO THEIR ATTORNEYS OF
19 RECORD:

20 Lien Claimant Frontline Medical Associates, Inc. ("Frontline") respectfully submits the
21 following limited opposition to the proposed consolidation and stay of all compound pharmaceutical
22 lien proceedings.

23 ///

24 ///

25 ///

26 ///

27 ///

1 **I. Frontline Supports a More Efficient and Responsive Lien Claim Process, but Has**
2 **Concerns About the Proposed Consolidation**

3 Frontline is in favor of more responsive and efficient procedural mechanisms to address lien
4 claims. Frontline also understands the difficulty the Board faces in processing and handling the
5 volume of lien claims, as well as underlying workers' compensation claims. Frontline is in favor of
6 a procedural mechanism that is truly designed to clear up the current backlog of lien claims.
7 However, Frontline is very concerned that the proposed consolidation may not lead to the efficient
8 processing of lien claims, and may, in fact, have the opposite effect of making it difficult, if not
9 impossible, to resolve such claims.

10 Frontline is also concerned that insurers and third party administrators ("TPA's") have been
11 purposely delaying resolution of compound pharmaceutical lien claims, thereby creating the current
12 backlog of lien claims. The goal of insurers and TPA's appears to be to force limitations on, or
13 even end, the dispensation of compound pharmaceuticals. Frontline is concerned that consolidation
14 may achieve this result, despite the best efforts of the Board to prevent this from happening.
15 Frontline therefore opposes any consolidation that does not serve the purpose of creating a fair and
16 more efficient means to resolve lien claims and clear the backlog of liens at the Board.

17 **II. Frontline Has Not Experienced Significant Delay**

18 Frontline has not experienced any significant delay in the resolution of its lien claims at the
19 Los Angeles Board, and is satisfied with the manner and speed with which its lien claims have
20 proceeded. Frontline is concerned that consolidation of its lien claims will result in its lien claims
21 taking far longer to resolve.

22 If any consolidation is to take place, it should be limited to those lien claimants that
23 voluntarily agree to consolidation. It would be inequitable to force all lien claimants into a single
24 consolidated case. To that end, it appears that a limited number of lien claimants make up the vast
25 majority of filed lien claims with the Los Angeles Board. During the recent conference to discuss
26 the lien claims, one lien claimant's representative advised the Board that her employer had filed
27 hundreds (and perhaps thousands) of lien claims over the past year. This individual may have been
28 from a party named "Landmark." Frontline's limited number of lien claims should not be

1 consolidated with the voluminous lien claims filed by entities such as Landmark. There should be
2 some discretion in determining which lien claimants, if any, should be subject to consolidation.

3 **III. Insurance Carriers Should Not Be Rewarded for Dragging Their Feet**

4 Frontline shares the concern expressed by other lien claimants that insurance carriers and
5 TPA's are deliberately slowing the process. The individual for "Landmark" mentioned that her
6 employer has been forced to file lien claims because insurance carriers are simply unwilling to
7 discuss the lien claims unless and until a formal claim is filed with the Board. This, in turn, appears
8 to be one of major reasons why so many lien claims are filed with the Board, and have created the
9 backlog discussed at the conference. The carriers and TPA's are forcing the Board to deal with a
10 situation that they have created through their refusal to deal fairly and expeditiously with lien
11 claimants.

12 Although consolidation in the abstract appears to be a neutral procedural mechanism, i.e. it
13 should harm neither the lien claimants nor the carrier, this may not be the case. Consolidation may
14 reward carriers and TPA's at the expense of lien claimants. Consolidation may delay resolution of
15 the lien claims for many of the lien claimants who have not been experiencing delay. Consolidation
16 may force all claimants into one boat, where it will take many years to resolve the thousands of
17 distinct lien claims. Many "smaller" lien claimants will simply give up and/or go out of business.
18 Many will no longer prescribe compound pharmaceuticals. This will play right into the apparent
19 goal of the insurance carriers and TPA's - to limit, and possibly stop, the dispensation of compound
20 pharmaceuticals. Regulation of compound pharmaceuticals should be left to legislative and
21 executive branch. Consolidation will, unfortunately, allow the carriers and TPA's to create a *de*
22 *facto* regulation which will effectively limit compound pharmaceuticals.

23 Frontline believes that the real issue behind the carriers' position is the expense of some
24 compound pharmaceuticals. They can be expensive, but many medical costs in workers'
25 compensation can be expensive. That is not a reason to delay payment of claims, nor should it serve
26 as a basis to consolidate. If all compound pharmaceutical lien claims can be consolidated, then the
27 next step could conceivably be consolidation of all physical therapy lien claims, consolidation of all
28 surgery lien claims, etc.

1 **IV. Consolidation Will Result in Doctors and Pharmacies Leaving the Workers'**

2 **Compensation Field**

3 Many doctors lose money on workers' compensation claim examinations, and other medical-
4 related services performed in the workers' compensation field. Doctors are sometimes able to
5 recoup some of those losses when they dispense compound pharmaceuticals. Doctors, like insurers
6 and other stakeholders in the system, are allowed to make a profit. If all compound pharmaceutical
7 liens are consolidated, doctors will no longer be able to rely on this source of revenue. Doctors will
8 not only stop prescribing compound pharmaceuticals, they will leave the workers' compensation
9 field altogether and turn to more lucrative areas of practice. It simply will not make sense to
10 continue working in a field where breaking even or losing money is the norm.

11 Frontline understands that there may be instances of "run away" lien claims for compound
12 pharmaceuticals. However, the lumping of all compound pharmaceutical lien claims into a single
13 consolidated matter will not address this issue. Instead, the vast majority of lien claimants will be
14 effectively punished for the alleged abuses of some.

15 **V. Compound Pharmaceutical Payments Are Based on Established Fee Schedules**

16 Frontline disagrees with the claim by some insurers and TPA's that there is a lack of
17 standards with respect to compound pharmaceuticals. There are, in fact, exacting standards.
18 Compound pharmaceuticals have NDC numbers. The web site of the Department of Industrial
19 Relations, Division of Workers' Compensation contains a pharmacy fee schedule calculator to
20 quickly determine the unit price, dispensing fee and total price of compound pharmaceuticals based
21 on those NDC numbers. Frontline's experience has been that disputes are quickly resolved once
22 Frontline provides a carrier or TPA with a printout from the WCAB web site showing the
23 calculation. Frontline is therefore somewhat perplexed by the claims of some carriers and TPA's
24 that they cannot determine the amount of money they should pay for the compound
25 pharmaceuticals. If there are issues with Frontline's dispensation of compound pharmaceuticals,
26 those issues can be addressed, and have been addressed, through the normal course of Frontline's
27 lien claims. As noted above, Frontline has not had issues concerning delay in the resolution of its
28 claims.

1 Finally, Frontline believes that consolidation (in any form) of thousands of lien claims filed
2 by multiple parties in multiple cases may not meet the threshold requirement that there exist
3 common issues of law or fact. The issues may simply be too distinct to merit consolidation on such
4 a global scale. Each case depends on the specific facts and legal issues underlying the applicant's
5 claimed injury and the medical treatment needed for that injury.
6
7

8 DATED: November 1, 2010

ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP

9
10 By: 

Drew E. Pomerance

David R. Ginsburg

Attorneys for Lien Claimant

FRONTLINE MEDICAL ASSOCIATES, INC.

1 Donald G. Norris, Esq. (SBN 90000)
2 NORRIS & GALANTER LLP
3 555 West 5th St., 31st Floor
4 Los Angeles, CA 90013
5 Tel: (213) 996-8465
6 Fax: (213) 996-8475
7 dnorris@norgallaw.com

8 Attorneys for Lien Claimant
9 NCL Pharmaceuticals, Inc

10
11 **WORKERS' COMPENSATION APPEALS BOARD**
12 **STATE OF CALIFORNIA**
13

14 LUIS ARRELLANO,

15 Applicant,

16 vs.

17 CANNON FABRICATION; SCIF,

18 Defendants.

19 WCAB CASE NO.: ADJ2132629 [lead case
20 re possible compound consolidation]

21 OBJECTION OF LIEN CLAIMANT NCL
22 PHARMACEUTICALS, INC. TO
23 CONSOLIDATION, AND REQUEST FOR
24 SETTLEMENT CONFERENCES WITH
25 CERTAIN CARRIERS

26 Lien Claimant NCL Pharmaceuticals, Inc. ("NCL") is one of the 19 compound lien
27 claimants identified by Los Angeles Board presiding Judge Jorja Frank in her power point
28 presentation on October 6, 2010. NCL hereby (1) objects to consolidation of its liens, and
(2) requests that settlement conferences be ordered with certain carriers as to its liens.

1. Objections to Consolidation

WCAB Rule 10589 permits consolidation only where there are common issues of
fact and law, and in the interests of efficient utilization of judicial resources. The potential
prejudice to any party is a key consideration, including but not limited to whether granting
consolidation would significantly delay the trial of any of the cases involved.

NCL provides different compounds and bills at different rates than other providers.
Although many compounds may include some similar components, those components are
very often combined with other ingredients, thereby requiring a different evaluation. NCL

1 strictly bills according to fee schedule, whereas certain other providers do not. There simply
2 are not sufficient common issues to warrant including NCL with other providers in a
3 consolidated proceeding. Doing so would unduly delay and jeopardize NCL's due process
4 right to trial and fair adjudication of its liens.

5 If consolidation is ordered as to NCL liens with any carrier or carriers, strict limits
6 must be imposed on such a proceeding:

7 A. Discovery should be limited to four months, so as not to unduly prolong the
8 proceedings.

9 B. Consolidated issues should be limited to the issue of reasonable medical necessity
10 of specified compounds, and the issue of their reasonable value.

11 C. Any carrier petitioning for consolidation should bear the burden of proof on these
12 issues.

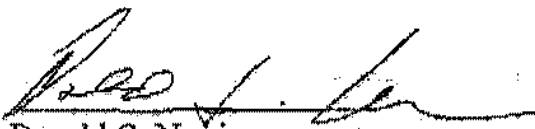
13 D. Any carrier seeking consolidation should be required to waive all other issues,
14 including AOE/COE, injury, disputes over body part, and MPN, as a condition to
15 consolidation.

16 2. Request for Settlement Conferences

17 At the October 6, 2010 conference Judge Mark Kahn said he would order providers
18 and carriers to attend settlement conferences regarding resolution of compound liens.

19 NCL has approximately \$700,000 in outstanding liens at the Los Angeles Board, and
20 additional sums outstanding at other Boards, with the following eight carriers: State Fund,
21 Liberty Mutual, Travelers, Sedgwick, Gallagher Basset, Zurich, SRS, and Zenith. NCL
22 requests that these carriers be required to attend settlement conferences with NCL to attempt
23 to resolve these liens. Holding such conferences would be the most promising way of
24 clearing the Board's lien backlog. No party would be prejudiced by being required to
25 participate in such a settlement conference.

26 Dated: November 1, 2010

27 
28 Donald G. Norris
Attorneys for Lien Claimant
NCL Pharmaceuticals, Inc.

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ss.

I am employed in the County of Los Angeles, State of California with Norris & Galanter LLP; I am over the age of 18 and not a party to the within action; my business address is 555 West Fifth Street, 31st Floor, Los Angeles, CA 90013. On the date shown below, I served the foregoing document described as

OBJECTION OF LIEN CLAIMANT NCL PHARMACEUTICALS, INC. TO CONSOLIDATION, AND REQUEST FOR SETTLEMENT CONFERENCES WITH CERTAIN CARRIERS on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

SEE ATTACHED SERVICE LIST

☒ (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles Hills, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ (PERSONAL SERVICE) I caused such documents to be delivered by hand as indicated above.

☐ (BY FEDERAL EXPRESS) I caused such document(s) to be delivered via Federal Express, priority delivery for next business day to the offices of the addressee(s).

Executed on November 1, 2010 at Los Angeles, California.

☒ STATE I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ FEDERAL I declare that I am a member of the bar of this court.


Thomas Seabaugh

SERVICE LIST

AIG
PO Box 25977
Shawnee Mission, KS 66225

ARGONAUT FRESNO
PO Box 153229
Irving, TX 75015

BERKSHIRE HATHAWAY PASADENA
PO Box 7008
Pasadena, CA 91109

BROADSPIRE GLENDALE
PO Box 29088
Glendale, CA 91209

CHARTIS COSTA MESA
PO Box 25977
Shawnee Mission, KS 66225

CHUBB SERVICES LOS ANGELES
PO Box 30570
Los Angeles, CA 90030

CIGA GLENDALE
PO Box 29066
Glendale, CA 91209

CNA CLAIMS PLUS BREA
PO Box 8317
Chicago, IL 60680

CRUM FORSTER ORANGE
PO Box 14217
Orange, CA 92863

EMPLOYERS COMP GLENDALE
PO Box 539004
Henderson, NV 89053

EMPLOYERS' DIRECT
PO Box 5042
Thousand Oaks, CA 91359

ESIS CHATSWORTH

PO Box 31051

Tampa FL 33631

FARMERS PLEASANTON

PO Box 108843

Oklahoma City, OK 73101

FIREMANS FUND SACRAMENTO

PO Box 13340

Sacramento, CA 95813

FIRSTCOMP OMAHA

PO Box 3188

Omaha, NE 68103

GAB ROBINS BURBANK

PO Box 7858

Burbank, CA 91510

GALLAGHER BASSETT 70003 ANAHEIM

PO Box 14260

Orange, CA 92863

HARTFORD SACRAMENTO

PO Box 14475

Lexington, KY 40512

INTERCARE PASADENA

PO Box 7111

Pasadena, CA 91109

KAISER OAKLAND

PO Box 12927

Oakland, CA 94604

LIBERTY MUTUAL 29073 GLENDALE

PO Box 29073

Glendale, CA 91209

MAJESTIC IRVINE

PO Box 15120

Irvine, CA 92623

MTA/LOS ANGELES METROPOLITAN AUTHORITY
1 Gateway Plz
Los Angeles, CA 90012

PACIFIC COMP CLAIM THOU OAKS
PO Box 5042
Thousand Oaks, CA 91359

REPUBLIC INDEMNITY ENCINO
PO Box 20036
Encino CA, 91416

RISK ENTERPRISES BREA
PO Box 2307
Brea, CA 92822

SCIF GLENDALE
PO Box 92622
Los Angeles, CA 90009

SCRMA
PO Box 88708
Los Angeles, CA 90009

SEDGWICK PASADENA
PO Box 14623
Lexington, KY 40512

SPECIALTY RISK BREA
PO Box 2404
Brea, CA 92822

STATE FARM BAKERSFIELD
PO Box 22860
Bakersfield, CA 93390

TRAVELERS DIAMOND BAR
PO Box 6510
Diamond Bar, CA 91765

TRISTAR LOS ANGELES
PO Box 512028
Los Angeles, CA 90051

TOKIO MARINE PASADENA
PO Box 7217
Pasadena, CA 91109

WAUSAU BEAVERTON
PO Box 4025
Beaverton, OR 97076

ZENITH WOODLAND HILLS
PO Box 9055
Van Nuys, CA 91409

ZURICH LOS ANGELES
PO Box 968005
Schaumburg, IL 60196

BCP COLLECTIONS
454 E 3rd St., Ste 101
Los Angeles, CA 90022

CAL PHARMACY MGMT LOS ANGELES
PO Box 51880
Los Angeles, CA 90051

DANIEL CAPEN MD
7291 Garden Grove Blvd, Ste H
Garden Grove, CA 92841

DNM PHARMACY
6221 Wilshire Blvd., #100
Los Angeles, CA 90048

LANDMARK MEDICAL MANAGEMENT
5524 Pacific Blvd
Huntington Park, CA 90255

LIFE PHARMACEUTICAL MGMT
13896 Harbor Blvd., Ste 5-C
Garden Grove, CA 92843

MUMTAZ A ALI MD
293 E Caroline St, Ste D-2
San Bernardino, CA 92408

NCL PHARMACEUTICAL GLENDALE
PO Box 250337
Glendale, CA 91225

NEW AGE PHARMACEUTICALS
1147 S Beverly Blvd., Ste B
Los Angeles, CA 90035

PANTHER PHARMACEUTICAL
3350 E Birch, Ste 105
Brea, CA 92879

PHYMED INC AGOURA HILLS
28720 Roadside Dr., Ste 275
Agoura Hills, CA 91201

PHYSICIAN FUNDING RANCHO CUCAMONGA
12223 Highland Ave., Ste 106-560
Rancho Cucamonga, CA 91739

PHYSICIAN RX NETWORK
21030 Redwood Rd
Castro Valley, CA 94546

PRESCRIPTION CENTER PHARMACY BEVERLY HILLS
9735 Wilshire Blvd
Beverly Hills, CA 90212

PRIORITY FIRST PROFESSIONAL SAN BERNARDINO
295 E Caroline St., Ste D-4
San Bernardino, CA 92408

RX FUNDING RANCHO CUCAMONGA
7375 Day Creek Blvd., Ste 103-120
Rancho Cucamonga, CA 91739

SD ADVANCED ORTHO
15525 Pomerado Rd., Ste E-6
Poway, CA 92064

SUN LIFE FUNDING TUSTIN
635 E 1st St., Ste 140
Tustin, CA 92780

UNITED SERVICES PLUS
18607 Ventura Blvd., Ste 109
Tarzana, CA 91356



November 1, 2010

PHYSICIAN THERAPEUTICS LLC 2010 NOV -2 AM 10:27

RECEIVED
LOS ANGELES

DEPT OF INDUSTRIAL RELATIONS
DWC/WCAB

Honorable, Judge Jorja Frank,

Recently there has been confusion over two separate categories of therapeutic products, Medical Foods and compounded drugs. The California Workers' Compensation Institute, a non-profit funded solely by the insurance industry issued a report that erroneously linked these products together as though they were in the same category. Not only are these therapies different in nature, they are regulated by different authorities. The "Medical Food" category is regulated nationally by the FDA and compounded drugs are regulated in each state by the State Board of Pharmacy. Compounded drugs are formulated at the local level for an individual patient and Medical Foods are a manufactured product subject to FDA cGMP in their processing.

According to the CWCI report, the average cost for a one month supply of these different products in the first quarter of 2009 were:

Compounded drugs = - \$728

Medical Foods = \$233

Medical Food Regulation -FDA

Congress created the Medical Food category in 1988 as an amendment to the Orphan Drug Act. FDA Guidance states "The term medical food, is defined in section 5(b) of the Orphan Drug Act (21 U.S.C. 60ee (b) (3)). "Medical Foods are distinguished from the broader category of foods for special dietary use and from foods that make health claims by the requirement that medical foods be intended to meet distinctive nutritional requirements of a disease or condition, used under medical supervision and intended for the specific dietary management of a disease or condition. The term "medical foods" does not pertain to all foods fed to sick patients. Medical foods are foods that are specially formulated and processed (as opposed to a naturally occurring foodstuff used in a natural state) for the patient who is seriously ill or who requires the product as a major treatment modality."

Compounded Drug Regulation - California Board of Pharmacy

Compounded drugs are a completely different category of therapeutic agents and are regulated in California by the Board of Pharmacy under the California Code of Regulations.

Compounded Limitations and Requirements (CCR 1735.2)

The pharmacy does not compound drug product prior to receipt of a valid prescription unless under the following conditions. (CCR 1735.2(a))

The pharmacy prepares and stores a limited quantity of a compounded drug product in



PHYSICIAN THERAPEUTICS LLC

RECEIVED
LOS ANGELES

2010 NOV -2 AM 10:27

DEPT OF INDUSTRIAL RELATIONS
DWC/WCAB

advance of receipt of a patient specific prescription solely in such quantity as is necessary to ensure continuity of care of an identified patient population as defined. (CCR 1735.2[b])

The pharmacy compounds a reasonable quantity of drug product that is furnished to a prescriber for office use upon prescriber order as allowed in CCR 1735.2 (c) that:

- Is sufficient for administration or application to patients in the prescriber's office or for distribution of not more than a 72-hour supply, (CCR 1735.2[c](1))
- Is reasonable considering the intended use of the compounded medication and the nature of the prescriber's practice, (CCR 1735.2[c](2)) AND
- Is an amount, which the pharmacy is capable of compounding in compliance with pharmaceutical standards for integrity, potency, quality and strength for any individual prescriber or for all prescribers taken as a whole. (CCR 1735.2[c](3))

The pharmacy does not compound medication until it has prepared a written master formula that includes the following elements (CCR 1735.2[d](1-6)):

Active ingredients used. Inactive ingredients used.

The medical food products manufactured by Physician Therapeutics are based on a patented neurotransmitter technology that was developed and evaluated scientifically over many years.

Convenience packs were created at the request of physicians who found the administration of a specific medical food product with a specific generic drug reduced drug side effects. These products have been the subject of a number of peer reviewed publications in medical journals.

Medical Foods and Convenience Packs are listed by NDC number in the Medi-Cal database, Medispan, Firstdata Bank, and the FDA NDC databases

PROOF OF SERVICE BY MAIL
1013A, 2015-5 CCP

RECEIVED
LOS ANGELES

2010 NOV -2 AM 10:27

Re: Medical Foods vs. Compounds

INDUSTY RELATIVE
DWC/WCAB

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2980 Beverly Glen Circle Suite 301, Los Angeles, California 90077

On November 2, 2010 I served the foregoing document described as:

Letter of Explanation Medical Foods vs. Compounds

Served to: Honorable, Judge Jorja Frank

FOR: COMPLETE CLAIMS PROCESSING INC

Scaled envelope addressed as follows:

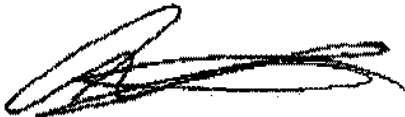
WCAB - Los Angeles

**320 W. 4th Street 9th floor
Los Angeles, CA 90013-2329**

Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date of postage meter date is more than one day of deposit of mailing affidavit.

Executed on November 2, 2010 at Los Angeles, California

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.



**Arsen Aragyan,
Lien Representative**

Honorable, Judge Jorja Frank

Alcala & Associates

EAMS: ALCALA ASSOCIATES LOS ANGELES

EAMS NO.: 4499682

EAMS ADMINISTRATOR: Chris R. Alcala

EAMS ADMINISTRATORS PHONE: 213 924 2659

EAMS ADMINISTRATORS EMAIL: chris@alcalaassociates.com

P.O. Box 861255

Los Angeles, CA 90086-1255

213.924.2659

REPRESENTATIVE FOR: PHYSICIAN'S SCIENCE AND NATURE INC.

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

PHYSICIAN'S SCIENCE AND NATURE
INC.,

Applicant,

v.

WCAB

Defendant,

PHYSICIAN'S SCIENCE AND NATURE INC.
(DENDRACIN NEURODENDRAXCIN),

Real Parties in
Interest.

Case No.: UNASSIGNED

OPPOSITION TO NOTICE OF INTENT
TO CONSOLIDATE "COMPOUND
MEDICATIONS" MADE SUA SPONTE

COMES NOW, PHYSICIAN'S SCIENCE AND NATURE INC., [hereinafter,
"Respondent"] by and through its' Representative of Record who opposes the NOTICE OF
INTENT TO CONSOLIDATE COMPOUND MEDICATIONS MADE SUA SPONTE.

///

///

//

/

STATEMENT OF FACTS

It is understood that the Court Sua Sponte wishes to consolidate Compound Medication liens inasmuch as there exist no fee schedule.

PHYSICIAN'S SCIENCE AND NATURE INC., is the manufacturer of the drug Dendracin Neurodendraxcin Topical Pain Relief Lotion. [Hereinafter, "Dendracin "]. Dendracin **is not** [emphasis added] a compound ingredient and/or resultant topical medication.

Dendracin possesses FDA Approval [Exhibit 1]

Westwood Laboratories, inc. the manufacturer is a licensed Drug Manufacturer [Exhibit 2]

Clinical Studies regarding its' effectiveness have been performed [Exhibit 3]

Dendracin possesses it's own NDC Code-27495000602, therefore, subject to the Workers' Compensation Pharmacy Fee Schedule. [Exhibit 4]

MEMORANDUM OF POINTS AND AUTHORITIES

1

There Are Insufficient Common Issues of Fact to Support Consolidation

The governing authority is California Rules of Practice and Procedure Section 10589(a), which states as follows:

"In exercising that discretion, the Workers' Compensation Appeals Board shall take into consideration any relevant factors, including but not limited to the following:

1. whether there are common issues of fact or law;
2. the complexity of the issues involved;
3. the potential prejudice to any party;
4. the avoidance of duplicate or inconsistent orders; and the efficient utilization of judicial resources."

As indicated supra, Respondent vehemently opposes the consolidation and moreover the characterization of Dendracin as a compound medication

1 **CONCLUSION**

2 **WHEREFORE**, Respondent prays:

3 1. That the Courts Sua Sponte Motion for Consolidation be
4 denied as Dendracin is not a compound medication.
5

6
7 Respectfully submitted,

8
9
10 

11 Dated: November 1, 2010

12 _____
13 CHRIS R. ALCALA FOR:
14 PHYSICIAN'S SCIENCE AND NATURE
15 INC.
16
17
18
19
20
21
22
23
24
25
26
27
28

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service
Food and Drug Administration
Rockville, Maryland 20857

Jan 05, 2007

PHYSICIANS SCIENCE AND NATURE
7 PELICAN HILL CIR
NEWPORT COAST CA 92657

The Food and Drug Administration (FDA) has assigned the following
Labeler Code Number to your firm:

27495

This Labeler Code should be used on all forms related to drug establishment registration and/or drug product listing. Per Title 21, Part 207 of the Code of Federal Regulations (CFR), owners or operators of an establishment entering into the manufacture or processing of a drug or drugs shall drug list every drug in commercial distribution within 5 days after the beginning of operation.

Note that receipt of this letter is not to be construed as Federal Government endorsement or approval of the establishment or its products. If you have any questions, please contact the Quality Control Team (301) 210-2840.

Sincerely,

Paul M. Loebach
Public Health Analyst
Office of Compliance
(Drug Registration and Listing)

STATE OF CALIFORNIA

**DEPARTMENT OF PUBLIC HEALTH
FOOD AND DRUG BRANCH**

DRUG MANUFACTURING LICENSE

Westwood Laboratories, Inc.
710 South Ayon Avenue
Azusa, CA 91702

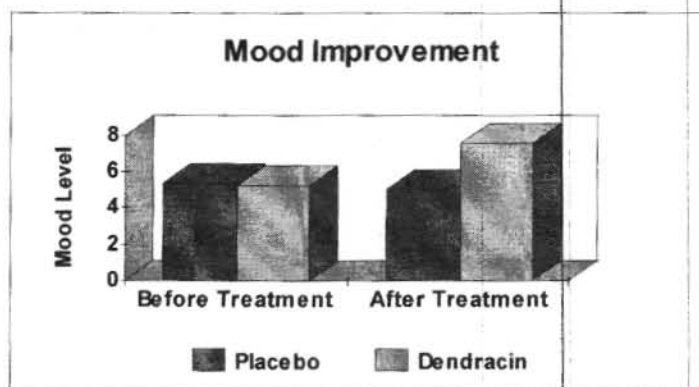
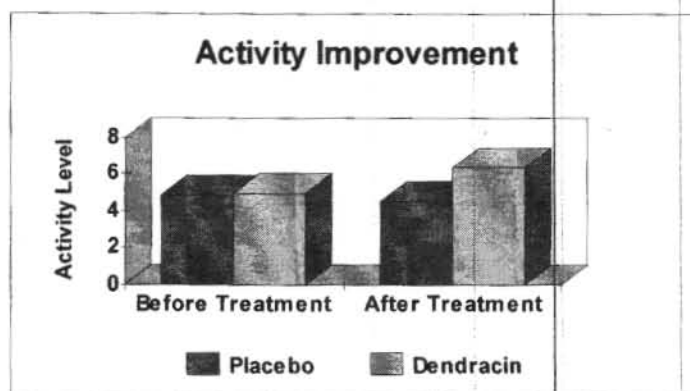
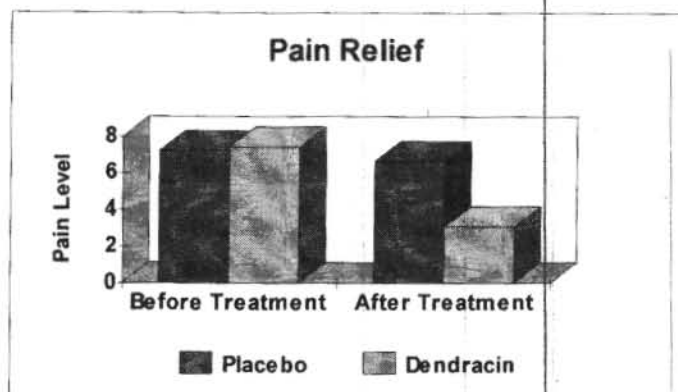
LICENSE NUMBER: 40642
EXPIRATION DATE: 5/28/2011

The person named herein is licensed to manufacture drugs through the expiration date of this license. This annual license is issued in accordance with the provisions of Division 104, Chapter 6, Article 6 of the California Health and Safety Code and is not transferable to any other person or place. The licensee is required by law to immediately notify the California Department of Public Health of any change in the information reported in the application.

Food and Drug Branch, 1500 Capitol Avenue, MS 7602, PO Box 997435, Sacramento, CA 95899-7435 (916) 650-6500

CLINICAL OUTCOME STUDIES

DENDRACIN®*



Average Pain Relief: 51% (P=.01)

81% of patient reported at least 25% pain relief

Average Activity Improvement: 31% (P=.01)

Average Mood Improvement: 43% (P=.01)

Adverse Effects: Burning sensation 2%, skin rash 1%, systemic complaints 0

*Methodology: Placebo controlled, single blinded, forward crossover, subjective and functional evaluation of 97 patients.

Average Duration of follow up; 4 weeks (range 1 to 8 weeks), Average age of patient; 34 (range 15 to 79)

Pain level determined using numerical analog scale (0-10)

Activity level determined using a composite of functional testing such as range-of motion and patient reports of activities and sexual function (0-10 with 10 being the highest level of function)

Mood level determined by numerical analogue scale (0-10 with 10 being the highest mood level)

Medical conditions treated included pain due to acute and chronic muscololigamentous injuries, neuropathies (diabetic, post herpetic), osteoarthritis, rheumatoid arthritis, bursitis, tendonitis, fibromyalgia, and tension headaches.

National Library of Medicine's DailyMed website

<http://dailymed.nlm.nih.gov/dailymed/about.cfm>

Download the FDA's PDF of this label

Search By Drug Name or NDC Code: 2749500602

GO

RxNorm Names Not yet provided

DENDRACIN NEURODENDRAXCIN (methyl salicylate, menthol and capsaicin) lotion
[Physicians Science & Nature Inc.]

<u>Category</u>	<u>DEA Schedule</u>	<u>Marketing Status</u>
HUMAN OTC DRUG LABEL		OTC monograph not final

Disclaimer: Most OTC drugs are not reviewed and approved by FDA, however they may be marketed if they comply with applicable regulations and policies. FDA has not evaluated whether this product complies.

Drug Label Sections

- [Description](#)
- [Clinical Pharmacology](#)
- [Indications & Usage](#)
- [Contraindications](#)
- [Warnings](#)
- [Precautions](#)
- [Adverse Reactions](#)
- [Overdosage](#)
- [Dosage & Administration](#)
- [How Supplied](#)
- [Patient Counseling Information](#)
- [Supplemental Patient Material](#)
- [Boxed Warning](#)
- [Patient Package Insert](#)
- [Highlights](#)
- [Full Table of Contents](#)
- [Medication Guide](#)

Active ingredients

Methyl Salicylate 30%

Capsaicin 0.0375%

Menthol USP 10%

Purpose

Topical Analgesic

Uses:

For temporary relief of mild pain due to muscular strain, arthritis, and simple back pain. Does not cure any disease.

Warnings:

For external use only. Do not use in eyes, mouth, on mucous membranes, or genitals. Keep away from children. Do not tightly bandage. Do not use with heating pad. Do not use with other topical pain products.

Directions:

Use only as directed. Shake before each use. Prior to first use, rub small amount to check for sensitivity. Gently rub over painful areas. Dry before contact with clothes or bedding to avoid staining. Wash hands after use. Do not use more than 4 times daily or if pregnant or nursing. If swallowed, call poison control. If placed into eyes, rinse with cold water and call a doctor.

Do Not Use:

On cuts or infected skin, on children less than 12 years old, in large amounts, especially over raw or blistered skin, if allergic to any ingredients, PABA, aspirin products, or sulfa.

Store below 90°F/32°C.

Stop Use and Ask a Physician:

For severe undiagnosed pain. If pain worsens or persist for more than 7 days. If pain clears up and then recurs in a few days. If itching or rash occurs.

Inactive ingredients:

Water, benzocaine, glyceryl stearate, PEG 100 stearate, stearic acid, propylene glycol, cetyl alcohol, dimethyl sulfoxide, poloxamer 407, capsaicin, aloe barbadensis gel, borage oil, ammonium acryloyldimethyltaurate, zingiber officinale root extract, boswellia serrata extract, soya lecithin, methylparaben, propylparaben, DMDM hydantoin, sodium stearyl glutamate, triethanolamine.

Manufactured for Physicians' Science and Nature, Inc.

220 Newport Center Drive 11-634, Newport Beach, CA 92660

Made in the USA

Patent Pending

Principal Display Panel

Physicians' Science and Nature Inc.

Dendracin

Neurodendraxcin®

Improved

Professional Formula

Topical Pain Relief Lotion

Deep Penetrating Action

60 ml (2 fl oz)

NDC 27495-006-02

DRUG FACTS

Active Ingredients:

Methyl Salicylate 30%

Capsoadin U 0.375%

Menthol USP 1.0%

Purpose

Topical Analgesic

Topical Analgesic

Topical Analgesic

USES: For temporary relief of mild pain due to muscular strain, arthritis, and simple back pain. Does not cure any disease.

WARNINGS: For external use only. Do not use in eyes, mouth, on mucous membranes, or genitals. Keep away from children. Do not tightly bandage. Do not use with heating pad. Do not use with other topical pain products.

DIRECTIONS: Use only as directed. Shake before each use. Prior to first use, rub small amount to check for sensitivity. Gently rub over painful areas. Dry before contact with clothes or bedding to avoid staining. Wash hands after use. Do not use more than 4 times daily or if pregnant or nursing. If swollen, call poison control. If placed into eyes, rinse with cold water and call a doctor.

Do Not Use: On cuts or infected skin, on children less than 12 years old, in large amounts, especially over raw or blistered skin, if allergic to any ingredients, PABA, aspirin products, or sulfa. **Store below 90 F/32 C.**

Stop Use and Ask a Physician: For severe undiagnosed pain, if pain worsens or persists for more than 7 days, if pain clears up and then returns in a few days, if itching or rash occurs.

INACTIVE INGREDIENTS: water, benzocaine, glyceryl stearate, PEG 100 stearate, citric acid, propylene glycol, cetyl alcohol, dimethyl sulfide, poloxamer 407, capsaicin, aloe barbadensis gel, borago oil, ammonium acryloyldimethylsulfate, zingiber officinale root extract, boswellia serrata extract, soy lecithin, methylparaben, propylparaben, DMDM hydantoin, sodium stearoyl glutamate, triethanolamine.

Manufactured for **Physicians' Science and Nature Inc.**
220 Newport Center Drive 11-634, Newport Beach, CA 92660

Made in the USA
Patent Pending

**Physicians'
Science and Nature Inc.**

DENDRACIN[®]
Neurodendraxcin[®]

*Improved
Professional Formula*

Topical Pain Relief Lotion
Deep Penetrating Action

80 ml (2 fl oz)
NDC 27495-006-02

2 oz Label

Physicians' Science and Nature Inc.

Dendracin, Neurodendraxcin[®]

Improved Professional Formula

Topical Pain Relief Lotion

Deep Penetrating Action

120 ml (4 fl oz)

NDC 27495-006-04

DRUG FACTS

Active Ingredients

Methyl Salicylate 30%

Capsaicin 0.0375%

Menthol USP 10%

Purpose

Topical Analgesic

Topical Analgesic

Topical Analgesic

USES: For temporary relief of mild pain due to muscular strain, arthritis, and simple back pain. Does not cure any disease.

WARNINGS: For external use only. Do not use in eyes, mouth, on mucous membranes, or genitals. Keep away from children. Do not tightly bandage. Do not use with heating pad. Do not use with other topical pain products.

DIRECTIONS: Use only as directed. Shake before each use. Prior to first use rub small amount to check for sensitivity. Gently rub over painful areas. Dry before contact with clothes or bedding to avoid staining. Wash hands after use. Do not use more than 4 times daily or if pregnant or nursing. If swallowed, call poison control. If placed into eyes, rinse with cold water and call a doctor.

Do Not Use: On cuts or infected skin, on children less than 12 years old, in large amounts, especially over raw or blistered skin, if allergic to any ingredients, PABA, aspirin products, or sulfa. Store below 90 F/32 C.

Stop Use and Ask a Physician: For severe undiagnosed pain. If pain worsens or persists for more than 7 days. If pain clears up and then recurs in a few days. If itching or rash occurs.

INACTIVE INGREDIENTS: water, benzocaine, glyceryl stearate, PEG 100 stearate, stearic acid, propylene glycol, cetyl alcohol, dimethyl sulfoxide, poloxamer 407, aloe barbadensis gel, borago oil, ammonium acryloyldimethyltaurate, zingiber officinale root extract, boswellia serrata extract, soya lecithin, methylparaben, propylparaben, DMDM hydantoin, sodium stearyl glutamate, triethanolamine.

Manufactured for Physicians' Science and Nature Inc.

222 Newport Center Drive 11-634, Newport Beach, CA 92660

Made in the USA

Patent Pending

Physicians'
Science and Nature Inc.

DENDRACIN
Neurodendraxcin®

Improved
Professional Formula

Topical Pain Relief Lotion
Deep Penetrating Action

120 ml (4 fl oz)

NDC 27495-006-04

4 oz Label

DENDRACIN NEURODENDRAXCIN

methyl salicylate, menthol and capsaicin lotion

Product Information

Product Type

HUMAN OTC DRUG

NDC Product Code
(Source)

27495-006

Route of Administration

TOPICAL

DEA Schedule

Active Ingredient/Active Moiety

Ingredient Name

Basis of Strength

Strength

METHYL SALICYLATE (SALICYLIC ACID)

METHYL
SALICYLATE

18 mL in 60 mL

MENTHOL (MENTHOL)

MENTHOL

6 mL in 60 mL

CAPSAICIN (CAPSAICIN)

CAPSAICIN

0.0225 mL
in 60 mL

Inactive Ingredients

Ingredient Name

Strength

No Inactive Ingredients Found

Product Characteristics

Color

Score

Shape

Flavor

Contains

Packaging

Size

Imprint Code

# NDC	Package Description	Multilevel Packaging
1 27495-006-02	50 BOTTLE In 1 CARTON	contains a BOTTLE
1	60 mL In 1 BOTTLE	This package is contained within the CARTON (27495-006-02)
2 27495-006-04	50 BOTTLE In 1 CARTON	contains a BOTTLE
2	120 mL In 1 BOTTLE	This package is contained within the CARTON (27495-006-04)

Marketing Information

Marketing Category	Application Number or Monograph Citation	Marketing Start Date	Marketing End Date
OTC monograph not final	part348	01/01/2007	

Labeler - Physicians Science & Nature Inc. (012485755)

Revised: 03/2010Physicians Science & Nature In

Welcome to the California

DEPARTMENT OF INDUSTRIAL RELATIONS

Workers' compensation pharmacy fee schedule - simple prescription

This data is provided as a service to the workers' compensation community. Please send comments or questions to DWCFeeSchedule@dir.ca.gov.

You may download the current Medi-Cal pharmacy fee rates [here](#) (Zip file, 8.55 MB, updated 10/6/2010 - also available via ftp to www.dir.ca.gov, anonymous login). The file's record layout and instructions are included in the zip file, and may also be viewed [here](#).

You may look up the current price of simple prescriptions by completing the form below and clicking "price". For compound prescription pricing, click [here](#). If you are working from a file with 10 digit NDC numbers, please click [here](#).

NDC number: 27495000602 Please include leading zeros, e.g. 00002026002
 Metric decimal number of units: 60 e.g. 100 ea (tablets), 2.5 grams (ointments), 240 ml (or cc's - fluids)
 Usual and customary price: \$147.52 (including any dispensing fee) e.g. \$12.48
 Date of service: 10/8/2010 e.g. 01/05/2004
 Nursing home: ☐ Check this box if patient is in a nursing home
 No substitutions: ☒ Check this box **only** if the prescription **explicitly** requires a brand-name drug

[Clear form](#)[Price](#)

This information is supplied on 10/10/2010 for a date of service of 10/8/2010.

NDC No	Label name	Price date (start)	Number of units	Brand unit price	Product
27495000602	DENDRACIN LOTION	6/23/2010	60	2.3378	140.268
This pricing is only valid if the prescription explicitly requires No substitutions				Total of ingredients:	\$140.27
Plus the Medi-Cal dispensing fee of \$7.25					\$7.25
Equals subtotal:					\$147.52
Which is Equal to the usual and customary price of:					\$147.52
Therefore, the Payment price is the price minus the \$0.00 reduction for a patient Not in a nursing home (No reduction for dates of service on and after 9/1/2004):					\$147.52

Pricing is from data as of 10/6/2010.

Effective Jan. 6, 2006, the price calculator and the price data file are being updated weekly, as DWC receives updated price data from the Department of Health Services.

[Conditions of Use](#) | [Privacy Policy](#)
 Copyright © 2010 State of California

Schlossberg & Umholtz
3050 Saturn Street, Suite 100
Brea, California 92821
(714) 526-8460

Attorneys for Defendant

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

Argonaut Insurance)	Case No: ADJ3853855; ADJ114958 et. all.
Defendant,)	
vs.)	DEFENDANT'S PETITION FOR
)	CONSOLIDATION OF COMPOUND
Compound Pharmacy Liens)	PHARMACY LIENS
Does 1-100)	
)	
)	
Defendant)	

COMES NOW Defendant Argonaut Insurance, by their attorney of record Schlossberg & Umholtz to Petition for Consolidation of all compound pharmacy liens. These liens share issues in common for consolidation which need to be addressed prior to consideration for each individual lien.

The Workers' Compensation Appeals Board on its own motion has requested input from the Workers' Compensation community as to an issue upon which the vast number of compound pharmacy liens being filed at the WCAB may be consolidated. The purpose of this consolidation would be to reduce the disputes between the parties that result in an abundance of lien filings, Lien Conferences and Lien Trials.

Defendant Argonaut believes that there are sufficient issues in common in the following cases to justify consolidation so that the court may address those issues in common:

Gonzalo Ramos ADJ3853855; ADJ114958

Elmer Garcia ADJ 7091551

Luis Salgado ADJ 111996

1 Maria Garcia ADJ 957546

2 Frank Monteleone ADJ3483014

3 Rene Miron ADJ338085

4 Margaret Amescua ADJ4048472, ADJ3884264, ADJ7076357

5 There is sufficient basis to justify consolidation of these cases so that the issues may be addressed in
6 consolidation without violating the due process rights of the lien claimant. The issues in common are
7 whether the compound pharmacy prescription drugs are reasonable medical treatment according to
8 Labor Code Section 4600, 4600.1 and Regulation 9789.40. Defendant asserts that these compound
9 medications are not reasonable medical treatment based upon the following:

- 10 1) There are no standards upon which the physicians can rely to determine the contents of as well as
11 the safety and efficacy of the medications he prescribes.
- 12 2) There is a lack of medical evidence as to what criteria is necessary for determination by the
13 physician of the appropriate use of these medications.
- 14 3) There is no criteria for establishing the reasonable cost of the compound medication.

15
16 Traditional pharmacy compounding has been in use for many years and is a type of pharmacological
17 provision. Compounding can be used anyone who is having difficulty taking any medication or those
18 who are not being appropriately treated by the commercially available products. Defendant does not
19 dispute that some patients may benefit from their use however the recent widespread use of
20 compound medications in the Workers Compensation forum creates concern that reasonable and
21 necessary as well as appropriate treatment is being provided.

22
23 In many of these Workers Compensation compound medication lien matters physicians are being
24 provided pre-drafted prescription pads listing compounded medication available by a particular
25 compound pharmacy such as HNP Pharmaceuticals, Healthcare Compounding Pharmacy and Costa
26 Mesa Pharmacy just to name a few. The prescription does not disclose the contents of those
27 medications but are merely check the box prescription pads listing products such as compound
28 tropical creams including Capsaicin-5, Diclofenac 10%, Gabapentin-4 and Wasabi Rub to name a few.

1 Physicians rely upon the information and dosing specifics as stated in the Physicians Desk Reference
2 which is the standard reference for prescription drugs designed to provide physicians with the full
3 legally mandated information relevant to writing prescriptions. There is no standard of compounded
4 medications and little to no oversight as to the specific combination of medications, quality, efficacy
5 or validity of the amounts of ingredients contained in these compounds.

6 However, once a compound medication is created and marketed it is in essence a "new drug". New
7 drug combinations are required to proceed through FDA approval before they can be marketed. The
8 bulk production of compounded mixtures of FDA approved medications is also considered a "new
9 drug". The compound pharmacy community contends that they are not new drugs but rather
10 compounded medications not requiring the FDA approval process. Without that oversight and
11 approval process there is no standard upon which the prescribing physician may rely to determine the
12 proper dose and product for his patient.

13 In a statement regarding the use of compound medications before the Senate Special Committee on
14 Aging Steven K. Galson, M.D., M.P.H. Director Center for Drug Evaluation and Research U.S. Food
15 and Drug Administration stated as follows:

16 *"When compounding occurs on a large scale and it is not performed properly, compounders can expose many*
17 *patients to health risks associated with unsafe or ineffective drugs. This is especially the case when patients take these*
18 *compounded drugs in lieu of FDA-approved products.*

19 *By definition, pharmacy compounding involves making a new drug whose safety and efficacy have not been*
20 *demonstrated with the kind of data that FDA requires to approve a new drug. Consumers and health professionals rely*
21 *on this evidence-based drug approval process to ensure that drugs are safe and effective."*

22
23 When the PTP prescribes the use of the pre-determined creams and rubs he has no input or control
24 as to the content of the medications. There is no evidence that these medicines are any better than
25 traditional medicines either generic or non-generic or over the counter medications that are already
26 available and that have passed inspection and have oversight by the FDA.

1 In the prepared testimony of Sarah L. Sellers, PharmD Executive Director, Center for Pharmaceutical
2 Safety before the U.S. Senate Committee on Health, Education, Labor, and Pensions on October 23,
3 2003, she testified as follows:

4 *‘The full range of risks associated with the use of compounded drugs have not been identified, analyzed or*
5 *communicated to patients or prescribers. Section 502(n) of the FD&C Act requires that a manufacturer include a*
6 *summary of risks in advertising—all materials and statements, including press materials, oral statements, and sales*
7 *materials for managed care organizations and hospitals must meet FDA requirements for truthfulness, fair balance and*
8 *full disclosure [6]. Compounded drugs do not meet such requirements—promotional information for drugs made by*
9 *pharmacists is devoid of risk information.*

10 *In 1996, former FDA Commissioner David Kessler, MD warned that exempting pharmacy compounding*
11 *from provisions of the Food, Drug, and Cosmetic Act would create a shadow industry of unapproved drug*
12 *manufacturing thus undermining the FDA's authority to protect the public from ineffective or unsafe products [12].*
13 *Compounded drugs are produced outside our Federal regulatory framework and carry risks of subpotency, superpotency*
14 *and/or contamination. Complete and unbiased information on the size and scope of the industry has not been*
15 *generated—we cannot estimate with accuracy the exposures of patients to unapproved, pharmacy made drugs and the*
16 *associated effects on morbidity and mortality.*

17 *The ability of States to adequately protect the public from substandard drug exposure may be confounded by*
18 *discrepant, over-lapping and in some cases non-existent State regulations, a lack of resources and lack of will.*
19 *Professional standards for sterile compounding have not been consistently applied [14,15], and newly introduced,*
20 *enforceable standards issued by the United States Pharmacopeia are optional for State boards to adopt and enforce [15].*
21 *State Boards of Pharmacy oversight of pharmacy compounding is discrepant and regulations are minimally enforced.*
22 *While some States have adopted compounding rules that provide some public health protections, other States permit*
23 *unrestricted distribution of compounded drugs that are not dispensed pursuant to an authorized, unsolicited prescription.*
24 *It is ironic that so much concern is currently focused on the importation of drugs from other countries that may not match*
25 *our gold standard system of regulation for pharmaceuticals, while we have within our own borders a flourishing,*
26 *unregulated drug industry that manufactures, markets, and sells substandard products throughout the U.S.*

- 27 • *Pharmacy-compounded drugs do not meet Federal requirements for establishing safety and efficacy (21 U.S.C.*
28 *§ 355), for manufacturing (21 U.S.C. § 351(a)(2)(b)) or labeling for safe use (21 U.S.C. § 352(0(1)).*

- 1 • *Accurate, complete and unbiased information about the size and scope of the compounding industry in the U.S.*
2 *is not available.*
- 3 • *Federal compounding regulations (1997 FDA Modernization Act Section 503a) were nullified through a*
4 *U.S. Supreme Court ruling in 2002. Current State compounding regulations are inadequate to protect public*
5 *health and safety and to prevent individual patient exposures to unacceptable risks."*

6
7 There is no standard upon which the treating physician may rely to evaluate which compounded
8 medication and what amounts are reasonable medical treatment for the injured worker. Should the
9 promotional material being presented by the compound pharmacies be relied upon as to which
10 medications are useful and beneficial? Because the compounded medication has not gone through the
11 FDA approval process there is no standard of comparison to FDA approved medications.

12
13 The medical record in these cases is lacking sufficient evidence as to the use of these medications
14 versus medications that are readily available FDA approved medications already on the market. The
15 medical evidence further lacks any evidence that the use of these medications is rendering any benefit
16 to the injured workers using these medications over and above that which they would have
17 experienced by FDA approved medications.

18
19 Lastly, we also lack a standard to establish the reasonable cost for these compound medications. As
20 there is no standard content to the compound medications there can be no standard price as we have
21 established for FDA approved medications. Pursuant to Regulation 9789.40 which states as follows:

22 *"the maximum reasonable fee for pharmaceuticals and pharmacy services rendered after January 1, 2004 is*
23 *100% of the reimbursement prescribed in the relevant Medi-Cal payment system."*

24
25 In FDA approved medicines we can refer to the NDC codes to establish the reasonable cost of the
26 medications as each medication, dosage and brand is provided their unique NDC code. What we have
27 found when provided a breakdown of the compound medication NDC codes is that the compound
28

1 pharmacy industry has in most cases priced their medications far above the cost of the products used.
2 In many cases ten-fold the reasonable cost.

3
4 In an article entitled "Compound Pharmacy Fraud-Compounded medications pose a major fraud risk
5 in the Workers' Comp space, and a major danger to patients" by Dan Reynolds, Senior Editor of Risk
6 and Insurance he wrote:

7 *"the following medications are high on the list of those most commonly found in compound medications.*

8 -- *Ketoprofen POW: a nonsteroidal anti-inflammatory drug (NSAID), commonly found in gel form*

9
10 -- *Cyclobenzapril POW HCL: a muscle relaxant*

11 -- *Diclofenac POW Sodium: a nonsteroidal anti-inflammatory drug*

12
13 -- *Gabapentin POW: an anti-seizure medication*

14 -- *Lidocaine POW HCL: a numbing agent*

15
16 *For one, tracking down the National Drug Code data for compound drugs for accurate pricing purposes is*
17 *difficult because in many cases it isn't included within the prescription detail. Another issue is that the actual content*
18 *may not be as labeled. Since there isn't any oversight of the compounds and the companies creating them, there is the*
19 *question as to whether the drugs really contain what they are supposed to have. We have actually experienced some*
20 *situations where, upon further analysis of the actual ingredients, this was the case."*

21 Absent any medical evidence to the contrary we must also rely upon the intent of the legislature as to
22 the provision of generic medications when ever possible. As stated in Labor Code Section 4600.1:

23 *"(a)...any person or entity that dispenses medicines and medical supplies, as required by Section 4600, shall dispense*
24 *the generic drug equivalent.*

25 *(b)a person or entity shall not be required to dispense a generic drug equivalent under either of the following*
26 *circumstances:*

27 *(1) When a generic drug equivalent is not available.*

28 *(2) When the prescribing physician specifically provides in writing that a non-generic drug must be dispensed."*

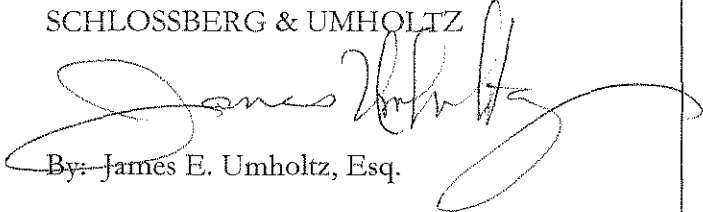
1
2 Clearly it was the intent of the legislature to limit the use of high priced, name brand medicines. This
3 was an effort to cut down the high cost of necessary medication to cure or relieve the effects of the
4 injury. However, as it is occasionally necessary to provide a name brand or more expensive
5 medication, the legislature left open the door by stating that the prescribing physician needs to
6 specifically provide in writing that a non-generic drug must be dispensed.

7
8 For these reasons we petition the court to grant consolidation of these cases.

9
10 Dated: November 1, 2010

11 Respectfully submitted,

12 Law Offices of
13 SCHLOSSBERG & UMHOLTZ

14 
15 By: James E. Umholtz, Esq.

16 JEU:kr
17
18
19
20
21
22
23
24
25
26
27
28

1 RX Funding Solutions
2 7375 Day Creek Blvd., Ste. 103-120
3 Rancho Cucamonga, CA 91739
4 (909) 373-1167

5 *RX Funding Solutions, LLC as Legal Representative for Costa Mesa Compounding Pharmacy*

6 **STATE OF CALIFORNIA**
7 **DIVISION OF WORKERS COMPENSATION**
8 **WORKERS COMPENSATION APPEALS BOARD**

9 **Case No: ADJ2132629**

10 **Luis Arellano,**

11 *Applicant,*

12 **vs.**

13 **Cannon Fabrication, SCIF, et al.**

14 *Defendants.*

15 **RX Funding Solutions, LLC for Costa Mesa**
16 **Compounding Pharmacy,**
17 ***Lien Claimant.***

18 **Statement of Position in Opposition**
19 **to the Consolidation of Compound**
20 **Pharmacy Liens**

21 COMES NOW, Rx Funding Solutions, LLC ("RXFS") hereby submits this Statement of
22 Position in Opposition to the Consolidation of Compound Pharmacy Liens in response to the
23 Notice of Intent and Petition to Consolidate filed by WCALJ Jorja Frank with the assistance of
24 Associate Chief Judge Mark Kahn of the Los Angeles WCAB. After a careful legal and ethical
25 analysis RXFS asserts that consolidation of compound pharmacy liens is generally inappropriate
26 because no common questions of law or fact exist with respect to its liens on file with the WCAB.

27 **INTRODUCTION TO THE PRACTICE OF COMPOUND MEDICATIONS**

28 The practice of compounding medications goes back to the middle ages. It has always
been recognized as the practice of pharmacy or "Apothecary." Compounding practice is taught in
all schools of and Colleges of Pharmacy. When Congress passed the legislation creating the Food
and Drug Administration (FDA) the practice of compounding by a pharmacy under the

Statement of Position in Opposition to Consolidation of Compound Pharmacy Liens

1 instructions and direction of a lawful prescription has always been recognized. (See *Guidance for*
2 *FDA Staff and Industry Compliance Policy Guides Manual Sec. 460.200 Pharmacy Compounding*).

3 THE NEED FOR COMPOUNDING MEDICATIONS

4
5 Before federal jurisdiction of the regulation of food and drugs in the United States
6 medicines were generally dispensed in a "raw ingredient" form usually in powders or liquids. As
7 mass production of medicines became more efficient pills and other forms of administration were
8 developed. As our country developed, medicines were distributed in mass rather than being
9 developed by an individual pharmacy and doctor. Notwithstanding the mass production of
10 medicines and their distribution to the public at large there was still the necessity of compounding
11 certain medicines to cater to the specific needs of each patient. Some patients may have allergies
12 to certain ingredients, may be unable to swallow a pill and some may not be able to tolerate
13 digestion of medication. Currently some of the medications that are approved for manufacture and
14 use in the United States are medicines that may not be the safest or tolerable by injured workers.
15 For example, one study discovered that there were as many as 7,600 deaths and 76,000
16 hospitalizations as the result of the use of Non-Steroidal Antiflammatory medications (NSAIDS).
17 We all know of reported misuse of Opioid medications and the fact that many medicines of this
18 type are sold on the street rather than used by the patients.

19 Physician malpractice and legal exposure has caused in part the need to look again at
20 compounding medications as a safe and effective alternative to cure or relieve their patient's
21 symptoms. As a result many physicians are now using compound medications. They are
22 particularly useful because there is little systemic exposure to side effects and the medications
23 have no "street value."

24 ANALYSIS OF THE "COMMON QUESTION" REQUIREMENT

25
26 The Court's Notice of Intent seems to be limited to "Compound Pharmacy Liens" however
27 compounds are formulated at the express order of the physician. Some are of the opinion that
28 pharmacies make the compounds in large vats or pots and mass produce this medication. This

1 assumption is false. It is rare that a pharmacy is disciplined for manufacturing vs. compounding.
2 Pharmacy compounds vary in ingredients and amounts. Each physician has his or her preferences
3 and the patient's needs are paramount. Each patient has a need for varying amounts and
4 differences in medication. Pharmacy practice does not allow itself to be suitable to the "mass
5 production" claims of insurers and payers. The FDA has long recognized the practice of
6 pharmacy compounding and have deferred to the State Boards of Pharmacy for enforcement.
7 Because of the unique nature of compounded medications and the requirement that each be
8 individually prescribed based on the particular needs of each patient, there would not be common
9 questions of fact, which could be subject to consolidation.

10 Moreover to try the "medical necessity issue" of compounded medicines would be in direct
11 contradiction to the California Supreme Court's holding in *State Compensation Insurance Fund v.*
12 *W.C.A.B. (Sandhagen)*, which requires insurers to obtain timely utilization review to allow the
13 introduction of any medical reports to dispute the medical reasoning of the prescriber. 44 Cal. 4th
14 230, 186 P.3d 535, 79 Cal. Rptr.3d 171, 73 Cal. Comp. Cases 981. The utilization reports of the
15 denying physicians would have to be each individually litigated making consolidation on this issue
16 improper.

17 With respect to the pricing of compounds, consolidation is even more difficult. With each
18 compound apprising of a unique combination of medications the pricing element cannot be
19 reasonably managed in a trial. Of course those compounds that can be priced in accordance with
20 CCR §9789.40 on the DWC Pharmaceutical Website Calculator would and should be left out of
21 any pricing trial because the reimbursement is already established.

22 RXFS files each lien on behalf of Costa Mesa Compounding Pharmacy in accordance with
23 the WCAB's requirements. With each lien RXFS includes a 10601 demand for documents to the
24 insurance carrier and defense counsel for medical reports, settlement documents and any
25 additional documentation that is related to the denial of payment of our lien. Before a lien is filed
26 RXFS attempts to collect from the claims adjuster and/or their defense counsel however they
27 usually require that our request for information and/or documents related to the case in chief be
28 accompanied with a copy of our lien. The majority of these claims have been accepted by the

1 insurance carrier however we are still required to file a lien before the claims adjuster or defense
2 counsel is willing to speak with us regarding the case.

3 It is important to note that once a lien is filed and our office receives the requested
4 information regarding the case in chief, settlement is usually made on the lien by our appeals
5 and/or collection department. Our office only litigates approximately 2% of all liens filed with
6 the WCAB. Therefore if the WCAB required insurance carriers and defense counsel to provide
7 all lien claimants with the information they request on the case in chief without the need to file a
8 lien, this would reduce the amount of liens filed by RXFS and likely other lien claimants as well.

9 Furthermore, if consolidation is allowed, insurance carriers and their defense attorneys
10 would use it as another excuse not to pay on our valid liens. Since the Notice of Intent to
11 Consolidate Pharmacy Liens was first made public RXFS has seen an increase in verbal and
12 written communication from insurance companies and their defense firms stating that they will
13 not be resolving or paying any compound liens until the consolidation is finalized. We have
14 made it clear that there has been no consolidation and no final decision has been made however
15 insurance companies and their defense counsel still refuse to settle our valid liens even when the
16 case in chief has been resolved and there are no valid defenses to payment leaving us with no
17 choice but to file a Declaration of Readiness to Proceed causing the WCAB further gridlock.

18 Since the Notice to Consolidate was introduced, many of our liens that have been
19 scheduled for lien conferences or trials have been bifurcated pending a final decision on the
20 consolidation issue. Again, this causes further delay in the settlement of our valid liens when they
21 could have been settled at the lien conference without further need to return to court. Some
22 defense firms are also advising their clients not to pay on compound liens. This blanket denial
23 also further delays payment and/or resolution of our valid liens.

24 CONCLUSION

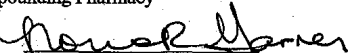
25
26 Based on all the reasons stated above, RXFS respectfully requests that the WCAB
27 withdraw its Notice of Intent and Petition to Consolidate. RXFS further suggests that the Court
28

1 encourage and arrange for a series of Settlement Conferences to help reduce the volume of liens
2 for compounded medications.
3

4 Dated: Nov. 1, 2010
5
6

Respectfully submitted,

Rx Funding Solutions for Costa Mesa
Compounding Pharmacy

By: 
Norma R. ARELLANO
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

James K. Lowery, Esq. State Bar No: 188967
FLOYD, SKEREN & KELLY, LLP
UAN: FLOYD SKEREN THOUSAND OAKS
ERN: 5114711
101 Moody Court; Suite 200
Thousand Oaks, CA 91360
(818) 715-0018

Attorneys for Defendant

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

DEBRA HINTON,

Applicant,

vs.

SPRING INDUSTRIES; CALIFORNIA
INSURANCE GUARANTEE ASSOCIATION
(CIGA) and its servicing facility, PRIVATE
ADJUSTING CLAIMS SERVICES FOR THE
HOME INSURANCE COMPANY, in liquidation,

Defendants.

ADJ NO.: ADJ4080984

PETITION FOR CONSOLIDATION
[TITLE 8 C.C.R. §10589]

COMES NOW, Defendants, California Insurance Guarantee Association (CIGA) and its third party administrators ("Defendants") by and through their attorneys of record, Floyd, Skeren & Kelly, LLP, who Petition the Workers' Compensation Appeals Board for consolidation of all cases pending before the Workers' Compensation Appeals Board inclusive of all District locations throughout the state of California in which any of the below listed pharmacies, facilities or medical professionals have filed liens in cases for which Defendants have or may become liable for reimbursement to the lien claimant, its representative, or assignee. Defendants seek an Order of Consolidation and Order Staying all proceedings before the Workers' Compensation Appeals Board between CIGA and any of the named lien claimants, representatives or assignees who have filed liens for services rendered during the period January 1, 2000 through November 4, 2010 seeking reimbursement for compound drugs in the form of topical creams containing Cyclobenzaprine, Capsaicin, Diclofenac, Gabapentin, Transdermal Compound, Flurbiprofen, Dendracin, Orphenadrine,

1 Sertraline, Cicloprofen, GKL Transdermal, Lidoderm, Lidocaine, Amitriptyline, Ketoprofen, or
2 Dextromethorphan.

3 The lien claimants, pharmacies, facilities and/or medical professionals that prescribed
4 the named compound topical creams include:

5 Cal Pharmacy

6 United Services Plus/RONCO

7 Landmark Medical Management

8 The Prescription Center

9 DNM Pharmacy

10 Physician Funding

11 RX Funding

12 BCP Collections

13 Phymed

14 Daniel Capen, M.D.

15 Encino Care Pharmacy

16 Living Well Pharmacy

17 NCL Pharmacy

18 See attached Addendum "A" list of cases incorporated herein by reference
19 representing cases in which California Insurance Guarantee Association (CIGA) or its administrating
20 service facility, is or may become liable for reimbursing one or more of the aforementioned lien
21 claimants, pharmacies, or facilities. This list is subject to change as additional cases are identified.

22 **THE PRESIDING JUDGE IS EMPOWERED TO CONSOLIDATE**
23 **CASES INVOLVING MULTIPLE INJURIES, PARTIES AND LIEN**
24 **CLAIMANTS.**

25 Workers' Compensation Appeals Board Rules of Practice and Procedure §10589
26 provides that consolidation of cases may be ordered if two or more cases are related, taking into
27 consideration the complexity of the issues involved and the potential prejudice of any party. In
28 determining whether to consolidate cases, the Presiding Judge must also consider factors such as
judicial economy, expediency and issues of common law and fact.

1
2 **COMMON ISSUES**

3 Prior to implementation of the Pharmacy Fee Schedule on January 1, 2004 pursuant to
4 Labor Code §5307.1, the parties and lien claimants generally relied upon the Red Book for guidance
5 in determining the reasonable amount to reimburse medical providers for prescription drugs,
6 including compound drugs. In the event that the medication in question did not have an identifiable
7 NDC Code Number listed in the Red Book, disputes frequently arose over the reasonable value for
8 reimbursement. Lien claimant providers would frequently charge their "usual and customary" price
9 for services rendered. With respect to compound drugs, little has changed since the days that the Red
10 Book was used in pricing prescriptive medications. Even though a Pharmacy Fee Schedule was put in
11 place effective January 1, 2004, more often than not, the NDC Code Number listed by the pharmacy
12 for compound drugs is not contained in the master list found in the Pharmacy Fee Schedule. The
13 parties, including lien claimants, are left to the settlement process to resolve the dispute, and if
14 incapable of doing so, the dispute must be litigated on a case-by-case basis utilizing the resources of
15 the Workers' Compensation Appeals Board.

16 Assuming there is no dispute over industrial causation and injury, the primary
17 common issue in each dispute involving lien claimants dispensing compound drugs involves how
18 much to reimburse the provider for services and products, proper licensing of facilities, professionals
19 and pharmacies dispensing compound medications is always a question in these disputes, as well as
20 statutorily mandated procedures for preserving, rotating, and dispensing compounded medications.

21 With regard to litigation between Defendants and each of the named lien claimants,
22 the common issues of fact involve how much each of these facilities should be entitled to recovery as
23 the reasonable cost for reimbursement for compound topical creams and ointments prepared from the
24 aforementioned listed prescriptive medications.

25 //

26 //

27

28

1 With respect to common issues of law, the issue whether the provider is entitled to
2 reimbursement at all, depending on whether the provider satisfied the licensing, and other statutory,
3 requirements to dispense such medications.

4 **JUDICIAL ECONOMY AND EXPEDIENCY**

5 If all cases between CIGA or its administering third party and the listed pharmacies,
6 facilities and medical professionals were not consolidated, each case would have to be separately
7 litigated on its own merits. This would necessarily entail tying up judicial resources at Workers'
8 Compensation Appeals Boards throughout the state of California over an extended period of time. It
9 would result in duplicative efforts over and over again in spite of the fact that only 15 different
10 medications are being used in combination.

11 For purposes of judicial economy and expediency, it would make much more sense
12 and save an enormous amount of time for both the Workers' Compensation Appeals Board, as well as
13 the parties, if these matters were consolidated for purposes of Trial or settlement. If settlement is not
14 possible, then the litigation process would become much more efficient through consolidation.

15 **COMPLEXITY OF ISSUES**

16 In weighing whether to consolidate these cases, the Presiding Judge must consider the
17 difficulty and complexity of issues, especially in light of duplicity which may occur should the cases
18 not be consolidated. The complexity of issues includes the need to present expert testimony on both
19 sides as to reasonable value of reimbursement for services rendered. In order to develop evidence and
20 support, both the lien claimants and Defendants would be forced to expend vast resources not only in
21 the form of witness fees, but also research and compilation of data each and every time Trial is held.
22 Depositions would have to be taken and discovery performed to obtain production of documents,
23 ascertain whether or not the dispensing facility was properly licensed to do so.

24 **POTENTIAL PREJUDICE**

25 Failure to consolidate cases involving Defendants and the aforementioned named
26 pharmacies, facilities and medical professionals would result in undue harm and prejudice to both
27 sides. Whereas consolidation would result in swift determination as to the appropriate amount of
28 reimbursement for services provided, failure to consolidate would result in lengthy delays and

1 needless exorbitant expense on the part of defendants and lien claimants. Failure to consolidate these
2 cases involving common issues of fact and law would result in separate trials and judicial
3 determinations with non-uniform opinions and awards. Indefinite delay in reimbursement to lien
4 claimants is costly and damaging to the business interest of the providers. Costs of depositions,
5 subpoenaing records, conducting discovery and presenting witnesses at Trial is expense to both sides,
6 especially when such procedures must be repeated over and over again each time a separate lien is
7 litigated.

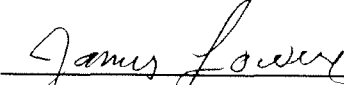
8 **CONCLUSION**

9 Defendants respectfully request that all cases involving these Defendants pending
10 before the Workers' Compensation Appeals Board, inclusive of all District locations throughout the
11 state of California, in which any of the aforementioned listed pharmacies, facilities or medical
12 professionals have filed liens for which these Defendants may have liability, be consolidated for
13 settlement and/or Trial purposes, and that an Order Staying all proceedings before the Workers'
14 Compensation Appeals Board be issued. The Order of Consolidation/Stay Order would apply only to
15 compound topical creams and ointments dispensed after January 1, 2000 where the NDC Code
16 Number is not reflected in the Red Book, or Pharmacy Fee Schedule that went into effect on January
17 1, 2004.

18 Respectfully submitted,

19 FLOYD, SKEREN & KELLY, LLP

20
21 Dated: November 2, 2010

22 
23 James K. Lowery
24 Attorney at Law
25
26
27
28

ADDENDUM "A"

Debra Hinton v. Spring Industries	ADJ4080984	Cal Pharmacy Long Beach Prescription Pharmacy Living Well Pharmacy
Connie Montes v. McDonalds	ADJ2349648;ADJ1291026	Landmark Medical Mgmt RX Funding
Levell Gentry v. Pendragon Staffing, Inc.	ADJ3903565	Prescription Center
Julia Quevedo-Diaz v. J & M Products	ADJ2612653	Phymed
Graciela Santa Rosa v. The Venturan Convalescent Center	ADJ1272469; ADJ2472814	Cal Pharmacy
Mary Sanchez v. Ventura County Obstetric & Gynecologic Medical Group	ADJ206963	Cal Pharmacy Daniel Capen
Johanna Hernandez v. Triad Systems	ADJ3655474;ADJ4584653; ADJ3547849	Daniel Capen
Maria Del Valle v. Select Personnel Services	ADJ2762713	NCL Pharmacy
Arturo Rodriguez v. Valley Fruit Produce	ADJ654831;ADJ1186764; ADJ578485	NCL Pharmacy

McNAMARA & DRASS, LLP
1055 W. 7th Street, Suite 3000
Los Angeles, CA 90017
(213) 225-2900.
(213) 225-2910 FAX
ATTORNEYS FOR DEFENDANT

WORKERS COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MINERVA GONZALEZ

Applicant,

vs.

EL CLASIFICADO INC.;
ACE AMERICAN INSURANCE CO.
c/o ESIS,

Defendant,

WCAB No.: ADJ3305723

PETITION FOR CONSOLIDATION AND
STAY OF INDIVIDUAL LIEN
PROCEEDINGS RELATING TO ACE
AMERICAN INSURANCE CO. c/o ESIS;
PETITION FOR JOINDER IN PENDING
CONSOLIDATION

(See Exhibit A For List of Proposed
Consolidated Cases)

Defendant Ace American Insurance Co., c/o ESIS, hereinafter "ESIS" seeks:

- A. An Order Consolidating pending cases (As Identified in the list attached as Exhibit A and subject to amendment as additional cases and providers are identified) in which bills and WCAB Lien requests are pending relating to Lien Claimants and Real Parties in Interest, Rx Funding, Physicians Funding, Phymed, and others to be identified, hereinafter collectively referred to as "Compound Providers".
- B. An Order staying all proceedings in the individual cases (Identified in Exhibit A) by or on behalf of Compound Providers against ESIS.
- C. An Order joining the ESIS Consolidation with any related and similar consolidations relating to the same lien claimants and same factual and legal issues.

1
2 For the reasons more fully articulated in the petitions and other pleadings
3 concurrently filed in the Compound Medication Consolidation, a consolidation
4 and stay of bills and lien claims filed by Compound Providers against ESIS is
5 appropriate for adjudication of common issues of fact and law relating to alleged
6 unfair business practices by Compound Providers and remedies relating thereto
7 including disallowance of liens and restitution of previous payments. In support
8 thereof, ESIS alleges as follows:
9

- 10 1. The WCAB has authority to consolidate cases with common issues of law and
11 fact as set forth in Title, 8, Cal. Code Regs. §10260. The WCAB has the
12 authority to consolidate liens issues while allowing the remaining issues to
13 proceed through the normal adjudication process. In *Argent Medical*
14 *Laboratory, Inc., et al. v. WCAB (Barrera)*(1994) 60 CCC 28 (writ denied), the
15 WCAB found that the Board had the power to consolidate liens issues citing
16 considerations of “judicial economy and the power of every court to do those
17 things required in the interest of justice.”
- 18 2. ESIS is a third party administrator handling workers’ compensation claims in
19 litigated cases before different district offices of the Workers’ Compensation
20 Appeals Board in which bills and liens have been presented to ESIS on or on
21 behalf of lien claimants and Compound Providers Rx Funding, Physicians
22 Funding, and Phymed. Attached hereto and marked as Exhibit “A” is a list of
23 those cases.
- 24 3. The Compound Providers on these cases have provider unnecessary topical
25 medications without regard for the patient’s needs.
- 26 4. The Compound Providers on these cases have charged fees in excess of the
27 sums allowed pursuant the Medi-Cal payment system as outlined in Title 8,
28 Cal. Code Regs. 9789.40.

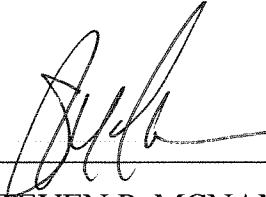
- 1 5. The Compound Providers have in some cases altered or modified the NDC
2 (National Drug Code) numbers on their billing from previous billing
3 statements for the same charges thereby increasing the apparent appropriate
4 level of reimbursement.
- 5 6. The Compound Providers have employed NDC numbers for medications not in
6 the Medi-Cal Database without providing the underlying NDC numbers
7 necessary to determine the drug cost portion pursuant to Title 8, Cal. Code
8 Regs. 9789.4(b)(1).
- 9 7. The Compound providers have billed for medications whose NDC code does
10 not fit the Medi-Cal Data base, or section 14105.45 of the Welfare and
11 Institutions Code in excess of the 83% average wholesale price of the lowest
12 priced therapeutically equivalent drug, contrary to Title 8, Cal. Code 9789.40
13 (b)(2).
- 14 8. Scientific literature incorporated in Title 8, Cal. Code Regs. 9792.24.2,
15 Appendix D shows that many of the medicines used in compound medications
16 are not indicated on a medical basis or efficacious in the treatment of chronic
17 injuries.
- 18 9. Since the consolidation now sought by ESIS relates to the same Compound
19 Providers which are the subject matter of other pending Consolidations it
20 would be appropriate for the ESIS Consolidation to be joined into the master
21 file.

22
23 **WHEREFORE**, defendants pray that the cases identified on Exhibit A be
24 consolidated and joined to any main case designated by the WCAB on the issue of
25 consolidation of compound pharmaceuticals providers' liens. Defendant requests that an
26 Order staying proceedings with respect to the liens of Rx Funding, Physicians Funding,
27 and Phymed issue on the cases identified on Exhibit A. Defendants request that the
28 WCAB allow the amendment of Exhibit A and the addition of other Compound Providers

1 to be included in any Order of Consolidation and Staying Proceedings, along with any
2 other relief the WCAB deems appropriate.

3
4 DATED: 11/01/2010

MCNAMARA & DRASS, LLP

5
6
7 

8 STEVEN P. MCNAMARA

9 Attorneys for ESIS
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3 **PROOF OF SERVICE BY MAIL (1013a, 2015.5 C.C.P.)**
4 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

5 I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to
6 the within entitled action; my business address is 1055 W. 7th Street, Ste. 3000
7 Los Angeles, CA 90017

8 On the date noted below, I served the within:

9 **Document Name Here ???/??/????**
10 **(ANDY VIELMAN vs. The Services Group)**
11 **VNO 0554949/ADJ2400062**

12 **(Master Claim Number: C494C0256223)**

13 on the interested parties in said action. I caused such envelope to be deposited in the mail by
14 placing a true copy with postage thereon fully prepaid in the United States mail at Los
15 Angeles, California addressed as follows:

16 (Original Proof of Service and Report(s) for WCAB Held in File Pending Hearing)

17 I am “readily familiar” with the firm’s practice of collection and processing correspondence
18 for mailing. It is deposited with the U. S. Postal Service on that same day in the ordinary
19 course of business. I am aware that on motion of party served, service is presumed invalid if
20 postal cancellation date of postage meter date is more than 1 day after date of deposit for
21 mailing an affidavit. I declare under penalty of perjury under the laws of the State of
22 California that the foregoing is true and correct.

23 Executed on October 22, 2010 at Los Angeles, California

24
25
26
27
28

Ronald Lawrence Snider

ESIS Compound Pharmecutical Cases:				ADJ Number:		
Applicant			Employer			
PEDRO	GONZALEZ	vs.	Pete's Road Service	ADJ441073	ADJ14269870	ADJ4528760
MINERVA	GONZALEZ	vs.	EL CLASIFICADO INC.	ADJ3305723		
ANA	BATRES	vs.	Los Angeles Times Fedral Credit	ADJ4665394		
KEVIN	NGUYEN	vs.	Time Warner	ADJ2221581		
MARIO	TOSCANO	vs.	Time Warner	ADJ6638796		
CRISTOBAL	HERRERA	vs.	Inland Container Corp.	ADJ 923460		
JOSEPH	REID	vs.	Time Warner	ADJ698717		
RUBEN	ROSALES	vs.	Time Warner	ADJ1877868	ADJ1633522	

1 PROOF OF SERVICE BY MAIL (1013a, 2015.5 C.C.P.)
2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am a resident of the county aforesaid; I am over the age of eighteen years and not a party
4 to the within entitled action; my business address is: 1055 West 7th Street, Suite 3000, Los
Angeles, California 90017

5 On 11/2/10 I served the within:

6
7 **PETITION FOR CONSOLIDATION**
8 **RE: Minerva Gonzalez vs. El Clasificado Inc.**
WCAB Case No.: ADJ3305723/POM 0300009,
Master Claim No.: 494C0253836

9 on the interested parties in said action. I caused such envelope to be deposited in the mail by
10 placing a true copy with postage thereon fully prepaid, in the United States mail at Los
Angeles, California addressed as follows:

11 CHIEF JUDGE MARK KAHN
(Sent electronically on 11/1/10 to Mkahn@dir.ca.gov)

12 PRESIDING JUDGE JORGA FRANK
13 (Sent electronically on 11/1/10 to JFrank@dir.ca.gov)

14 MR. DAMIEN J. MIRANDA
3333 E. Concourse, Suite 4200
15 Ontario, CA 91764
(Re: Minerva Gonzalez vs. El Clasificado Inc.)

16 HINDEN & BRESLAVSKY
17 Mr. Greg Kanter
4661 West Pico Boulevard
18 Los Angeles, CA 90019
(Re: Pedro Gonzalez vs. Pete's Road Service)

19 LAW OFFICES OF LESSING C. SOLOV, APC
20 Mr. Jamey A. Teitell
1625 W. Olympic Blvd., Suite 802
21 Los Angeles, CA 90015
(Re: Ana Batres vs. Los Angeles Times Federal Credit)

22 KATNIK & KATNIK
23 Mr. Norman P. Katnik
1501 N. Broadway
24 Santa Ana, CA 92706
(Re: Kevin Nguyen vs. Time Warner, Inc.)

25 GRAIWER & KAPLAN, LLP
26 Mr. Manuel Graiwer
3600 Wilshire Blvd., Suite 2100
27 Los Angeles, CA 90010
(Re: Mario Toscano vs. Time Warner Cable, Inc.)
28

1 LAW OFFICES OF ELLIOTT J. WACHTEL
Mr. Elliott J. Wachtel
2 6464 Sunset Boulevard, #900
Hollywood, CA 90028-8011
3 (Re: Cristobal Herrera vs. Inland Container Corp.

4 LAW OFFICES OF RONALD J. NOLAN
Mr. Ronald J. Nolan
5 P.O. Box 55398
Valencia, CA 91385-0398
6 (Re: Joseph Reid vs. Time Warner Cable)

7 LEYVA & NIGHT, APC
Mr. Michael L. Leyva
8 2632 West Beverly Boulevard
Montebello, CA 90640
9 (Re: Ruben Rosales vs. Time Warner)

10 RX FUNDING SOLUTIONS, LLC
7375 Day Creek Blvd. Suite 103-120
11 Rancho Cucamonga, CA 91739

12 PHYMED, INC.
28720 Roadside Dr., Suite 356
13 Agoura Hills, CA 91301

14 PHYSICIANS FUNDING
7375 Day Creek Blvd. Suite 103-120
15 Rancho Cucamonga, CA 91739

16 ESIS WOODLAND HILLS-WC
P.O. Box 31051
17 Tampa, FL 33631-3051

18 I am "readily familiar" with firm's practice of collection and processing correspondence for
19 mailing. It is deposited with the U. S. Postal Service on that same day in the ordinary course
20 of business. I am aware that on motion of party served, service is presumed invalid if postal
21 cancellation date of postage meter date is more than 1 day after date of deposit for mailing
an affidavit. I declare, under penalty of perjury under the laws of the State of California that
the foregoing is true and correct.

22 Executed on 11/2/10 at Los Angeles, California.
23

24 
25 Velia Benavides
26
27
28

1 RENZI & ACKERT
2 Diane M. Ackert, Esq. (SBN: 223129)
3 3111 North Tustin Ave., Suite 290
4 Orange, CA 92865
5 (714) 279-2700

6 Attorney for Defendant

7 **BEFORE THE WORKERS' COMPENSATION APPEALS BOARD**
8 **OF THE STATE OF CALIFORNIA**

9 MULTIPLE DEFENDANTS)

CASE NO: ADJ

10 v.)

11 COMPOUNDED MEDICATION)
12 PROVIDERS/COLLECTORS)
13)
14)

**DEFENDANT'S
COMPOUNDED PHARMACY
LIEN POSITION STATEMENT**

15
16
17 Comes now DEFENDANTS, on behalf of multiple permissibly self-insured and insured
18 Employers and carriers and administrators, through its attorney of record, Renzi & Ackert, to file its
19 Position statement re Compounded Pharmacy Lien Claimants and collectors .

20 **FACTS**

21 Multiple applicants, where cases are admitted with MPNs in place or denied cases, there are
22 being filed by doctors and lien collectors, liens for compounded medications which are not FDA
23 approved. The practice has become very commonplace only over the last few years.

24 Now at issue are the reasonableness of these liens for compounded medication prescribed by
25 many doctors and medical groups through various pharmacies.

26 Defendants herein believe that these medications which are not FDA approved are in
27 violation of multiple code sections and are also addressed in the chronic pain management guidelines
28

1 adopted by the DWC and outlined in detail at:

2 [http://www.dir.ca.gov/dwc/DWCPropRegs/MTUS_Regulations/MTUS_ChronicPainMedicalTre](http://www.dir.ca.gov/dwc/DWCPropRegs/MTUS_Regulations/MTUS_ChronicPainMedicalTreatmentGuidelines.pdf)
3 [atmentGuidelines.pdf](http://www.dir.ca.gov/dwc/DWCPropRegs/MTUS_Regulations/MTUS_ChronicPainMedicalTreatmentGuidelines.pdf)

4 Further, Defendants contend that the following are issues:

5
6 **CONTENTIONS**

- 7 **I. THE VIOLATION OF BUSINESS AND PROFESSIONS CODE**
8 **§4170 BY VARIOUS PTP DOCTORS AND**
9 **PHARMACEUTICAL MANAGEMENT/LIEN COLLECTORS**
- 10 **II. THE COMPOUND MEDICATION PRESCRIBED TO THESE**
11 **APPLICANTS ARE NOT MEDICALLY REASONABLE OR**
12 **NECESSARY**
- 13 **III. THERE GENERALLY ARE NOT PROPER REQUESTS FOR**
14 **AUTHORIZATION PER ADMINISTRATIVE REGULATION**
15 **§ 9792(o) AND THE EN BANC DECISION OF *CERVANTES***
- 16 **IV. ASSUMING THE MEDICATION IS DEEMED MEDICALLY**
17 **NECESSARY BY THE WCJ, THE CHARGES ARE**
18 **UNREASONABLE AND EXCESSIVE**
- 19 **V. THESE MEDICATIONS AND THE USE OF THEM ARE NOW**
20 **ADDRESSED IN THE CHRONIC PAIN MANAGEMENT**
21 **GUIDELINES WHICH REFER TO EACH MEDICATION AND**
22 **WHETHER IT IS APPROVED AND FOR WHAT PURPOSE**

23 **ARGUMENT**

- 24 **I. THE VIOLATION OF BUSINESS AND PROFESSIONS CODE**
25 **§4170 BY VARIOUS PTP DOCTORS AND**
26 **PHARMACEUTICAL MANAGEMENT/LIEN COLLECTORS**

27 Labor Code § 5705 provides that the burden of proof rests upon the party or lien claimant
28 holding the affirmative of the issue. California Business and Professions Code § 4170 (attached)
provides, in part, as follows:

- (a) No prescriber shall dispense drugs or dangerous devices to patients in his or her
office or place of practice unless all of the following conditions are met:

...

- (7) The prescriber provides the patient with written disclosure that the patient has a

1 choice between obtaining the prescription from the dispensing prescriber or obtaining
2 the prescription at a pharmacy of the patient's choice.

3 In almost all of these cases, the Pharmacy or physician who provides the billing for the
4 doctor that prescribed this medication, has a duty to determine whether the doctor has complied with
5 Business and Professions Code sections before asserting its lien for payment on any of the drugs
6 prescribed and given to these applicants.

7 To date, most of the lien claimants have not offered written disclosures or proof of any kind
8 that the physician prescribing these drugs complied with Business and Professions Code § 4170.
9 Since the lien claimant has not offered any evidence to show compliance with Business and
10 Professions Code § 4170, the burden of proof as required by the Labor Code and case law has not
11 been met.

12 **II. THE COMPOUND MEDICATION PRESCRIBED TO**
13 **APPLICANT IS NOT MEDICALLY REASONABLE OR**
14 **NECESSARY**

15 Labor Code § 4600 provides that treatment that is reasonably required to cure or relieve from
16 the effects of the injury shall be provided by the employer. Treatment must be in accordance with
17 guidelines adopted by the Administrative Director or, prior to the adoption of those guidelines, the
18 updated version of American College of Occupational and Environmental Medicine. These
19 guidelines generally reflect practices as generally accepted by the health care community and apply
20 the current standards of care. For injuries not covered by guidelines, treatment shall be in accordance
21 with other evidence based medical treatment guidelines generally recognized y the national general
22 community that are scientifically based.

23 In most of these cases, the PTP who prescribed compounded medications, including
24 Ketorub, Wasabi Rub, Gabarub, Lopapodone, Hydrodoc and Magrub, and many others between the
25 period of 2007 through 2010. **In 2009, the Chronic Pain Medical Treatment Guidelines were**
26 **amended to include a statement that compounded medication is not a recommended form of**
27 **treatment.** In 2006, The Food and Drug Administration (FDA) issued a news release which
28 contained a warning about serious health risks associated with compounded topical creams which
can cause grave reactions, including seizures and irregular heartbeats. The director of the FDA was

1 quoted in the news release as saying, "Compounded topical anesthetic creams, like all compounded
2 drugs, are not reviewed by the FDA for safety and effectiveness, and are not FDA-approved. These
3 high-potency drugs may expose patients to unnecessary risks, especially when they are used without
4 proper medical supervision." There are FDA-approved drugs that are commercially available,
5 properly labeled and regularly used in healthcare settings. These should first be considered before
6 a doctor prescribes compounded medication.

7 In the an article titled, "Unknown Risks of Pharmacy-Compounded Drugs," which was
8 published in The Journal of the American Osteopathic Association in February of 2008, the author
9 said because of the risks involved with compounded medication, it should only be considered as an
10 alternative to FDA approved medication in rare circumstances when a therapeutic option is not
11 available. Under those circumstances, the physician and patient should be provided with reliable-
12 quality control testing data to confirm the safety and effectiveness of the compounded medicine.

13 Here, most of the PTPs prescribing these medications did nothing more than place pre-
14 printed stickers on PR-2s indicating that they were prescribing various compounded medications
15 each month. The doctors failed to discuss in any of there reports why traditional, FDA approved
16 medication was not an option. The doctors failed to discuss in their reports what traditional, FDA
17 approved medications were tried before prescribing compounded mediation and why they were not
18 acceptable. The doctors failed to discuss in there reports why they were prescribing these specific
19 compounded medications, which should have been specifically created for Applicants to provide
20 them with a benefits that they were not able to obtain through FDA approved medication. In most
21 instances the doctors failed to discuss why an Applicant needed multiple creams, rubs and pills to
22 be dispensed simultaneously every single month for a period of months or years. The doctors also
23 failed to discuss in their reports that they reviewed data to confirm the safety and effectiveness of
24 the compounded medication. In most cases the doctor failed to discuss in their reports whether
25 Applicant was even receiving any benefits from this compounded medication. As such, these types
26 of reports cannot be considered substantial evidence on the issue of the reasonableness and necessity
27 of this compounded medication.

28 Often the billing for medications in these cases takes the form of thousands of dollars for

1 pe periods where the doctor simultaneously prescribed Applicant both FDA approved medication
2 and non-FDA approved compounded medication. Again, there is often absolutely no discussion
3 in the doctor's reports why the compounded medication is medically reasonable and necessary and
4 the reports are also silent on whether the doctor even took into consideration whether it would even
5 be safe for Applicant to mix the FDA approved medication with the non-FDA approved
6 compounded drugs.

7 **Most QME physicians and AME physicians have not found a need for specialized, non-**
8 **FDA approved compounded medication.**

9
10 **III. THERE WAS NOT A PROPER REQUEST FOR**
11 **AUTHORIZATION PER ADMINISTRATIVE REGULATION**
§ 9792(o) AND THE EN BANC DECISION OF *CERVANTES*

12 It is well established law that medical treatment is subject to Utilization Review. The
13 Utilization Review process is triggered by a proper request for treatment as outlined in
14 Administrative Regulation § 9792.6(o). In the En Banc decision of *Cervantes v. El Aguila Food*
15 *Products, Inc.*, (2009) 74 CCC 1336 (Cervantes), the UR Guidelines are only triggered by a request
16 from the primary treating physician that complies with AD Rule § 9792.6(o). Written request for
17 authorization must be on either the Doctor's First Report of Injury, a PR-2 or in narrative form. If
18 in narrative form, the top of the document shall clearly be marked this is a request for authorization.
19 The rule recognizes that fact that claims adjusters receives numerous medical reports everyday and
20 by requiring the PTP to clearly mark that the report contains a request for treatment allows the
21 adjuster to quickly and easily determine what needs to be sent to Utilization Review.

22 In most of these cases, the lien claimant has failed to provide any evidence to substantiate
23 that treatment was requested in compliance with AD Rule 9792.6(o). Without a proper request for
24 treatment, there was no duty on the carrier's part to start the Utilization Review process for this
25 medication. In fact, it appears that most of the PTPs prescribed medication month after month
26 without any regard for the insurance carrier's right to send all treatment requests through Utilization
27 Review.

1 **IV. ASSUMING THE MEDICATION IS DEEMED MEDICALLY**
2 **NECESSARY BY THE WCJ, THE CHARGES ARE**
3 **UNREASONABLE AND EXCESSIVE**

4 Pursuant to the En Banc decision of *Tapia v. Skill Master Staffing* (2008) 73 CCC 1338, the
5 lien claimant has the burden of proving its charges are reasonable. A lien claimant's billing, by
6 itself, does not establish that the claimed fee is "reasonable". Therefore, in the absence of rebuttal
7 evidence, the lien not be allowed in full if it is unreasonable on its face.

8 All of the non-FDA approved compounded medications in these cases was dispensed
9 between 2007 and 2010. As such, amended AD Rule § 9789.40 (attached), which became effective
10 02/28/2007, applies to all dates of service. Per Labor Code § 5705 and *Tapia*, it is up to the lien
11 claimant to establish reasonableness of charges. It must, therefore, offer evidence proving
12 reasonableness per AD Rule § 9789.40. This means determining fee schedule for each ingredient
13 in the compound medication. Medi-Cal rates apply to NDC numbers covered by the Medi-Cal
14 payment system. For NDC numbers not in the Medi-Cal payment system, the lien claimant must
15 determine whether the NDC for the underlying drug product from the original labeler appears in the
16 Medi-Cal database. If so, then the maximum fee is based upon Medi-Cal rates for the original
17 labeler's NDC. If the NDC for the drug disposed is not in the Medi-Cal system and the NDC for the
18 original labeler is not the the Medi-Cal system then the maximum reimbursement is 83% of the
19 average wholesale price of the lowest therapeutically equivalent drug. Pursuant to the recent panel
20 decision on the case of *Mendonza v. J. Buckbinder Industry* (2010) ADJ3069602 (decision attached),
21 the judge may also want to take into consideration the dispensing physician's actual cost for the
22 medication.

23 Some of the lien collectors purchase the accounts receivable from diferent pharmacies or
24 entities for an unknown amount. Most of the lien collectors refuse to disclose full details on the
25 compounds from the original compounding pharmacy as they are required to do under AD Rule §
26 9789.40. As such, the lien claimant will not be able to meet its burden of proof under Labor Code
27 § 5705 and *Tapia*.

28 / / /

 / / /

V. THESE MEDICATIONS AND THE USE OF THEM ARE NOW
ADDRESSED IN THE CHRONIC PAIN MANAGEMENT
GUIDELINES WHICH REFER TO EACH MEDICATION AND
WHETHER IT IS APPROVED AND FOR WHAT PURPOSE

CHRONIC PAIN MEDICAL TREATMENT GUIDELINES

Chronic Pain Medical Treatment Guidelines 8 C.C.R. §§9792.20 – 9792.26

MTUS (Effective July 18, 2009) Page 112 of 127

Topical Analgesics

Recommended as an option as indicated below. Largely experimental in use with few randomized controlled trials to determine efficacy or safety. Primarily recommended for neuropathic pain when trials of antidepressants and anticonvulsants have failed. (Namaka, 2004) These agents are applied locally to painful areas with advantages that include lack of systemic side effects, absence of drug interactions, and no need to titrate. (Colombo, 2006) Many agents are compounded as monotherapy or in combination for pain control (including NSAIDs, opioids, capsaicin, local anesthetics, antidepressants, glutamate receptor antagonists, α -adrenergic receptor agonist, adenosine, cannabinoids, cholinergic receptor agonists, β -agonists, prostanoids, bradykinin, adenosine triphosphate, biogenic amines, and nerve growth factor). (Argoff, 2006) There is little to no research to support the use of many of these agents.

Any compounded product that contains at least one drug (or drug class) that is not recommended is not recommended. The use of these compounded agents requires knowledge of the specific analgesic effect of each agent and how it will be useful for the specific therapeutic goal required. [Note: Topical analgesics work locally underneath the skin where they are applied. These do not include transdermal analgesics that are systemic agents entering the body through a transdermal means. See Duragesic® (fentanyl transdermal system).]

Non-steroidal antiinflammatory agents (NSAIDs): The efficacy in clinical trials for this treatment modality has been inconsistent and most studies are small and of short duration. Topical NSAIDs have been shown in meta-analysis to be superior to placebo during the first 2 weeks of treatment for osteoarthritis, but either not afterward, or with a diminishing effect over

another 2-week period. (Lin, 2004) (Bjordal, 2007) (Mason, 2004) When investigated specifically for osteoarthritis of the knee, topical NSAIDs have been shown to be superior to placebo for 4 to 12 weeks. In this study the effect appeared to diminish over time and it was stated that further research was required to determine if results were similar for all preparations. (Biswal, 2006) These medications may be useful for chronic musculoskeletal pain, but there are no long-term studies of their effectiveness or safety. (Mason, 2004) *Indications: Osteoarthritis and tendinitis, in particular, that of the knee and elbow or other joints that are amenable to topical treatment:* Recommended for short-term use (4-12 weeks). There is little evidence to utilize topical NSAIDs for treatment of osteoarthritis of the spine, hip or shoulder. *Neuropathic pain:* Not recommended as there is no evidence to support use. *FDA-approved agents:* *Voltaren® Gel 1% (diclofenac):* Indicated for relief of osteoarthritis pain in joints that lend themselves to topical treatment (ankle, elbow, foot, hand, knee, and wrist). It has not been evaluated for treatment of the spine, hip or shoulder. Maximum dose should not exceed 32 g per day (8 g per joint per day in the upper extremity and 16 g per joint per day in the lower extremity). The most common adverse reactions were dermatitis and pruritus. (Voltaren® package insert) For additional adverse effects: See NSAIDs, GI symptoms and cardiovascular risk; & NSAIDs, hypertension and renal function. *Non FDA-approved agents: Ketoprofen:* This agent is not currently FDA approved for a topical application. It has an extremely high incidence of photocontact dermatitis. (Diaz, 2006) (Hindsen, 2006) Absorption of the drug depends on the base it is delivered in. (Gurol, 1996). Topical treatment can result in blood concentrations and systemic effect comparable to those from oral forms, and caution should be used for patients at risk, including those with renal failure. (Krummel 2000)

Lidocaine *Indication: Neuropathic pain* Recommended for localized peripheral pain after there has been evidence of a trial of first-line therapy (tri-cyclic or SNRI anti-depressants or an AED

1 such as gabapentin or Lyrica). Topical lidocaine, in the formulation of a dermal patch
2 (Lidoderm®) has been designated for orphan status by the FDA for neuropathic pain. Lidoderm is
3 also used off-label for diabetic neuropathy. No other commercially approved topical
4 formulations of lidocaine (whether creams, lotions or gels) are indicated for neuropathic pain.
5 Non-dermal patch formulations are generally indicated as local anesthetics and anti-pruritics.
6 Further research is needed to recommend this treatment for chronic neuropathic pain disorders
7 other than post-herpetic neuralgia. Formulations that do not involve a dermal-patch system are
8 generally indicated as local anesthetics and anti-pruritics. In February 2007 the FDA notified
9 consumers and healthcare professionals of the potential hazards of the use of topical lidocaine.
10 Those at particular risk were individuals that applied large amounts of this substance over large
11 areas, left the products on for long periods of time, or used the agent with occlusive dressings.
12 Systemic exposure was highly variable among patients. Only FDA-approved products are
13 currently recommended. (Argoff, 2006) (Dworkin, 2007) (Khaliq-Cochrane, 2007) (Knotkova,
14 2007) (Lexi-Comp, 2008) *Non-neuropathic pain*: Not recommended. There is only one trial that
15 tested 4% lidocaine for treatment of chronic muscle pain. The results showed there was no
16 superiority over placebo. (Scudds, 1995)

17 **Capsaicin:** Recommended only as an option in patients who have not responded or are intolerant
18 to other treatments. *Formulations:* Capsaicin is generally available as a 0.025% formulation (as
19 a treatment for osteoarthritis) and a 0.075% formulation (primarily studied for post-herpetic
20 neuralgia, diabetic neuropathy and post-mastectomy pain). There have been no studies of a
21 0.0375% formulation of capsaicin and there is no current indication that this increase over a
22 0.025% formulation would provide any further efficacy. *Indications:* There are positive
23 randomized studies with capsaicin cream in patients with osteoarthritis, fibromyalgia, and
24 chronic non-specific back pain, but it should be considered experimental in very high doses.
25
26
27
28

1 Although topical capsaicin has moderate to poor efficacy, it may be particularly useful (alone or
2 in conjunction with other modalities) in patients whose pain has not been controlled successfully
3 with conventional therapy. The number needed to treat in musculoskeletal conditions was 8.1.
4 The number needed to treat for neuropathic conditions was 5.7. (Robbins, 2000) (Keitel, 2001)
5 (Mason-*BMJ*, 2004) See also Capsaicin.

6
7 ***Baclofen:*** Not recommended. There is currently one Phase III study of Baclofen-Amitriptyline-
8 Ketamine gel in cancer patients for treatment of chemotherapy-induced peripheral neuropathy.
9 There is no peer-reviewed literature to support the use of topical baclofen.

10 ***Other muscle relaxants:*** *There is no evidence for use of any other muscle relaxant as a topical*
11 *product.*

12
13 ***Gabapentin:*** Not recommended. There is no peer-reviewed literature to support use.

14 ***Other antiepilepsy drugs:*** *There is no evidence for use of any other antiepilepsy drug as a*
15 *topical product.*

16 ***Ketamine:*** Under study: Only recommended for treatment of neuropathic pain in refractory cases
17 in which all primary and secondary treatment has been exhausted. Topical ketamine has only
18 been studied for use in non-controlled studies for CRPS I and post-herpetic neuralgia and both
19 have shown encouraging results. The exact mechanism of action remains undetermined.
20 (Gammaitoni, 2000) (Lynch, 2005) See also Glucosamine (and Chondroitin
21

22 23 CONCLUSION

24 WHEREFORE, Defendant prays that the WCAB and the local Court finds that the
25 Pharmacy Lines must comply with all of the above in order to be reimburseable at all and if they are,
26 they are still subject to the pharmacy Fee Schedule.
27
28

1
2 DATED: November 1, 2010
3

RESPECTFULLY SUBMITTED,
RENZI & ACKERT

4 

5 SHARON M. RENZI, ESQ
6 DIANE M. ACKERT, ESQ.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. RIFENBARK & ZURAWSKI
Terry S. Kirk - 196515
2. 600 Wilshire Boulevard, Suite 1200
Los Angeles, CA 90017
3. Telephone: 213-228-2466
Facsimile: 213-627-7144
4. Attorneys for Liberty Mutual Insurance Company

5.
6.
7. **BEFORE THE WORKERS' COMPENSATION APPEALS BOARD**
8. **FOR THE STATE OF CALIFORNIA**

9.
10. **SERNA, GERARDO v SATCO, INC.**

Applicant,

Case No. ADJ6448593
et, al

11. v.
12. **Liberty Mutual Insurance Co.**

PETITION FOR CONSOLIDATION

13. *Defendants*
14.
15.
16.
17.

18. " COMES NOW Defendant, Liberty Mutual Insurance Company, by and through its
19. attorneys, and moves this Court for a Consolidation various cases involving Compound Liens.
20.

21.
22. The Court may, at its own discretion (under Title 8 of the California Code of
23. Regulations Section 10589) order the consolidation of "two or more related cases". Amongst
24. the factors to be taken into consideration are whether there are "common issues of fact or law",
25. and to ensure that there is an "efficient utilization of judicial resources." CCR §10589 (1)(5).
26.
27.
28.

1 **Request for Consolidation of Compound Drugs Prescribed by MPN Physicians**

2
3 Defendant requests consolidation of cases, regardless of Carrier, involving Compound
4 Drugs, and prescribed by MPN physicians. The consolidation would address reimbursement
5 rates for Compound Drugs. There are common issues of fact and law surrounding Compound
6 Drugs prescribed by MPN physicians; consolidating these cases on this basis would be an
7 efficient utilization of judicial resources.
8

9
10 **Opposition to Consolidation Based on Medical Necessity**

11
12 Defendant would oppose any consolidation based on medical necessity. Were the
13 cases so consolidated, it would have to be shown that the Compound Drug prescription was
14 necessary and reasonable in each individual case. Whether or not any individual Compound
15 Drug was effective in curing or relieving pain would depend on each injured worker, and
16 would be largely dependant on the facts in that individual case. Consolidating the cases on the
17 basis of reimbursement rates, by appropriately chosen physicians, would provide the broadest
18 guidance for the community. Once an appropriate level of reimbursement is established, large
19 numbers of these liens would likely resolve themselves, resulting in a clearing of the backlog of
20 lien cases.
21

22
23
24 Consolidating cases involving Compound Drugs prescribed by Non-MPN physicians
25 would involve multiple cases that do not share common law or facts. Typically in such cases
26 there are disputes over whether the treatment outside of the MPN is appropriate, and whether
27 the charges for such treatment should be allowed at all. Those issues need to be litigated on an
28

individual basis, and defendant would oppose any consolidation involving Compound Drugs
prescribed by Non-MPN physicians.

The Efficient Utilization of Judicial Resources:

The Court, on its own motion, set a large number of cases for hearing on 10-06-10. The
hearing was set to address the voluminous amounts of liens being filed by purveyors of
Compound Drugs. As discussed at the 10-06-10 Conference Regarding Consolidation, the
District Offices do not have the resources to efficiently manage the medical lien problem as it
currently exists.

The current fiscal environment and hiring freeze in place at the WCAB is creating an
ever increasing backlog of lien claims. The sheer volume of liens is preventing the timely and
efficient disposition of cases. The total impact that this situation has on overall WC costs is
difficult to measure. It is clear, however, that the time spent on disputed lien issues ties up
resources that would otherwise be utilized to manage the case in other aspects of the claim.

The clogging of the system inevitably drives up the costs of an individual case, at both
the WCAB and for defendant. The large number of these liens causes claims adjusters to deal
with never ending lien issues, as opposed to dealing with injured workers. Very often money is
paid on liens when it should not have been in order to avoid the never ending calls associated
with lien claimants. These additional funds result in artificially high claims costs.

Clearly litigating the Compound Drug Liens on an individual basis is not an effective
use of the Court's time, and if the current situation is allowed to fester will result in increased
delay and expense for all parties involved. Consolidating the Compound Drug Liens would

effectively remove many thousands of liens from the system, allow for efficient settlement and payment of such liens, and would be an efficient use of the Court's resources.

Common Issues of Fact:

The use of Compound Drugs has skyrocketed in recent years. Defendant questions the safety of Compound Drugs, and the possible adverse effects on injured workers. The factual disputes involved in these claims is whether or not the compound medication is effective, and if so, is it more suitable than other alternatives which should have been provided first.

Drugs compounded into creams or ointments and applied to the skin are by far the most common type of Compound Drugs involved in these liens. Regulation of these Compound Drugs is overseen by the US Food and Drug Administration (FDA). Current medical literature provides no evidence of the value of adding extra components of unproven efficacy to a compounded medication.

Common Issues of Law:

The OMFS provides that compound medicines should not cost more than the NDC price of the ingredients, plus a compounding and dispensing fee. In order to skirt these regulations, many providers are including "proprietary formulations" and other methods to establish a usual and customary fee in excess of the guidelines. Any consolidation should address how compound medicines are to be reimbursed. Defendant believes that the court should address these reimbursement rates in the consolidation.

1 Defendant would ask the Court to establish that each ingredient in a Compound Drug
2 needs an NDC number. Ingredients for which there is no NDC number at all would not be
3 separately reimbursable. Ingredients whose NDC number does not appear in the Medi-Cal
4 database would be priced per the methodology spelled out in § 9789.40. Payments for
5 Compound Drugs would be based on the sum of the fee for each ingredient plus the compound
6 dispensing fee (CDF). The CDF is determined by the following formula: $CDF = DF + CF +$
7 SF where DF is the dispensing fee, CF is the compounding fee, SF is the sterility fee. For
8 injections or perfusions the CDF is multiplied by the number of containers.
9

10
11 By establishing the reimbursement rate for Compound Drugs the court would provide
12 guidance to the community as to the value of these liens, which would likely result in the
13 resolution of a large number of them. By providing a basis for resolution of a large number of
14 these liens, the court would be removing many cases from the docket, easing the backlog
15 experience in recent years.
16

17 Defendant believes that the procedure codes and procedure descriptions must be
18 updated. In several instances changes for procedure codes have not been made since 1997. The
19 dollar amounts allowed by the fee schedule changed in 2001; however many new codes and
20 treatments have been added in the last 13 years. These new additions can not be billed due to
21 deficiencies in the procedure codes. Some codes do not exist in the fee schedule or the
22 procedure has changed so much that the fee schedule does not accurately reflect charges for the
23 changed procedure. This gap in the code has opened the door for providers to challenge bill
24 reviews, and results in disputes which ultimately result in the provider filing a lien.
25
26
27
28

Conclusion:

It is therefore respectfully requested that given the common issues of law and fact in the above-mentioned worker's compensation cases, an Order issue consolidating all of the matters presently involving Compound Drug Liens, whoever the provider. The Consolidation should address reimbursement rates for Compound Drugs provided by MPN physicians.

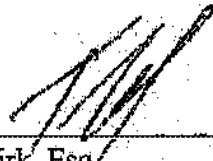
Consolidation will permit the parties to have all matters scheduled for an appropriate hearing before the WCAB for consideration of settlement or resolution of matters by the WCAB.

Accordingly, Liberty Mutual Insurance Company hereby requests an Order for Consolidation of these cases.

Dated: October 27, 2010

RIFENBARK & ZURAWSKI

By


Terry S. Kirk, Esq.

Attorneys for Defendants, Liberty Mutual
Insurance Company

1
2 BEFORE THE WORKERS' COMPENSATION APPEALS BOARD

3
4 FOR THE STATE OF CALIFORNIA

5
6
7 ORDER

8
9
10 SERNA, GERARDO v SATCO, INC. v. Liberty Mutual Insurance Co.

11
12
13 CASE NO. ADJ6448593, et al

14
15 It is hereby Ordered that the above-mentioned case are consolidated.

16
17
18
19
20
21 DATED: _____

22 _____
Workers' Compensation Judge

23 Workers' Compensation Appeals Board

1 RIFENBARK & ZURAWSKI
Terry S. Kirk - 196515
2 600 Wilshire Boulevard, Suite 1200
Los Angeles, CA 90017
3 Telephone: 213-228-2466
Facsimile: 213-627-7144

4 Attorneys for Liberty Mutual Insurance Co.

5
6
7 BEFORE THE WORKERS' COMPENSATION APPEALS BOARD
8 FOR THE STATE OF CALIFORNIA

9 SERNA, GERARDO v SATCO, INC. *Applicant,*

Case No.: ADJ6448593, et al

10 v.

11 Liberty Mutual Insurance Co.

12 *Defendants*

13
14 VERIFICATION

15
16 I, Terry S. Kirk declare under penalty of perjury under the laws of the State of California, as follows:

17 That I am an attorney licensed to practice law in the State of California and that I am associated with the
18 LAW OFFICES OF RIFENBARK & ZURAWSKI, attorneys of record in the above-captioned action.

19 That I have read the foregoing Petition for Contribution and know the contents thereof and state that the
20 same is true of my own knowledge, save and except as to those matters which were stated therein on information and
21 belief, and as to those matters I believe them to be true.

22 Executed this _____ day of November, 2010 at Los Angeles, CA

23
24 By: _____

25 Terry S. Kirk Attorneys for Defendant
26
27
28

STATE OF CALIFORNIA, COUNTY OF Los Angeles

I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party in this case; my business address is 600 Wilshire Blvd, Suite 1200, Los Angeles, CA 90013. I have provided service of process pursuant to Labor Code § 5316 and Code of Civil Procedure §§ 1013 and 2013.5.

WCAB

Jorja Frank
320 West 4th Street, 9th Floor
Los Angeles, CA, 90013

- 1] ***(BY MAIL)** I placed a sealed envelope, with appropriate postage thereon fully prepaid for first-class mail, for collection and mailing at Orange, California, following ordinary business practices. I am readily familiar with the practice of the Law Office of Rifenburg & Zurawski, for processing of correspondence, this practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for processing.
- [X] **** (BY PERSONAL SERVICE)** I personally served each such document to be delivered by hand to the addressee(s) noted above.
- 1] **(BY OVERNIGHT COURIER)**
- 1] **(BY FACSIMILE)** I transmitted the document by facsimile machine to the number indicated after the address(es) noted above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on 11/1/2010, at Orange, California.

Kirk Terry S

(Type or Print Name)

(Signature)

LOUIS SANTILLAN
LAW OFFICE OF DARLENE B. BURKE
20955 PATHFINDER ROAD, SUITE #100
DIAMOND BAR, CA 91765
TELEPHONE (909) 843-6322
FASCIMILE (866) 414-7658

2010-10-11 2:18:03

RECEIVED
STATE OF CALIFORNIA

Attorney for Lien Claimant Frontline Medical Associates

THE WORKERS COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

IN RE MOTION TO CONSOLIDATE
COMPOUND MEDICATION LIENS

EAMS NO.: ADJ 2132629 (LEAD CASE)

OPPOSITION TO CONSOLIDATE
COMPOUND MEDICATION LIENS

Frontline Medical Associates (FMA) is affiliated with most if not all approved California Medical Networks (MPN). FMA provides injured workers across Southern California with authorized and certified workers compensation goods and services including compound medications. FMA has pending liens at most of the Southern California Workers Compensation Appeals Board.

INTRODUCTION

On October 6, 2010, Presiding Judge Frank held a hearing and invited the parties of interest to submit their brief in support or in opposition to the Court's Notice of Intent to Consolidate Compound Pharmacy liens, dated August 24, 2010.

Consolidating and issuing a Stay against an MPN provider that bills for compound medication alongside other authorized certified goods and services will infringe on existing MPN and Treatment Authorization contracts. While an MPN provider will continue to meet their contractual obligation to evaluate and treat injured workers, a stay would provide employer and

1 insurers (Defendants) a temporary excuse to illegally circumvent its contractual and statutory
2 obligation to reimburse undisputed charges billed together with compound medication.

3 From this standpoint, FMA objects to the Court's Motion to Consolidate.

4
5 **A. MPN AND TREATMENT AUTHORIZATION CONTRACTS WERE NOT**
6 **MADE TO BE BROKEN**

7 In order for a physician to be affiliated with Defendants MPN, the physician must sign a
8 contract agreeing to certain terms and conditions. The central feature of said contracts is quality
9 care at a discount price paid expeditiously.

10 Defendants then enter into treatment authorization contracts with their network
11 physicians to ensure that certified and authorized treatment is being rendered.

12 FMA accepts, undertakes, and meets all their responsibility under the enforceable
13 contracts. Implied in said contracts is a covenant of good faith and fair dealing. Defendants more
14 often than not breach said contract by failing to carry out their responsibility to pay. A vacuum
15 creating grave consequences will occur if consolidation involves liens were compound
16 medication and other unpaid certified and authorized liens are on the same bill/lien.

17 A consolidation will infringe on existing MPN and Treatment Authorization contracts
18 fueling civil tort claims for bad faith, unfair, or fraudulent business practices on the basis that
19 Defendants are breaching their responsibility to pay by piggy backing on the Court's
20 Consolidation that has nothing to do with authorized and certified non compound medication and
21 treatment and therefore wrongfully withholding workers' compensation premiums revenue set
22 aside for and rightfully owed to MPN providers.

23 MPN Statutes require a certain percentage of physicians for an MPN to be sufficient and
24 prohibit physician compensation to be structured to achieve the goal of restricting access to
25 medical treatment. A consolidation and Stay will infringe on existing MPN physician
26 compensation structure forcing MPN physicians to close shop (*financial hardship*) which will
27 indirectly restrict applicants to medical treatment. The spirit behind the MPN system will
28 eventually cease to exist.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7

DE

9
10
11

13.

Respectfully submitted,

Louis Santillan

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I am readily familiar with the business practice of this office as it pertains to the collection and processing of correspondence for mailing, and declare that all correspondence is deposited with either the United States Postal Service or United Parcel Service in the ordinary course of business, on the dates shown. I am aware that on motion of the parties served, service is presumed invalid if mailing date or postage meter date is more than one day after date of deposit for mailing on affidavit.

PRESIDING JUDGE FRANK
WCAB - LOS ANGELES
320 WEST 4TH STREET, 9TH FLOOR.
LOS ANGELES, CA 90013-2329

S.C. CHIEF JUDGE KAHN
6150 VAN NUYS BOULEVARD, ROOM 105
VAN NUYS, CA 91401-3370

I placed such envelopes for mailing with the United States mail or with United Parcel Service at Diamond Bar, Ca 91765

EXECUTED on November 1, 2010, Diamond Bar, California

I declare under penalty of perjury under the law of the State of California that the above is true and correct.

Jackie Lopez

1 BARRY C. SKOLNICK, J.D.
2 JERILYN COHEN, 94632
3 SCOLL & ASSOCIATES
4 100 W. BROADWAY, SUITE 1050
5 GLENDALE, CA 91210
6 PHONE: (818) 502-6442
7 FAX: (818) 502-6415

8 ATTORNEY FOR DEFENDANTS
9 The Travelers Indemnity Company and
10 its Property Casualty Affiliates

11 **WORKERS' COMPENSATION APPEALS BOARD**
12 **STATE OF CALIFORNIA**

13 LUIS ARELLANO, et. al.

14 *Applicant,*

15 *vs.*

16 SHERMAN OAKS AUTO RESORT;
17 STATE COMPENSATION INSURANCE
18 FUND, et al.

19 *Defendants.*

EAMS No.: ADJ2131629 LEAD

**PETITION FOR BIFURCATION AND
CONSOLIDATION RE: COMPOUND
PHARMACY LIENS
Title 8, Sec. 10589**

20 Comes now THE TRAVELERS INDEMNITY COMPANY AND ITS PROPERTY
21 CASUALTY AFFILIATES to offer the following Petition for Consolidation of compound
22 pharmacy liens in support of the Order of Intent to Consolidate on the following grounds:

23 **FACTS**

24 An Order of Intent to Consolidate has issued. Other defendants have addressed the
25 procedural issues. However, there are significant factual issues which merit consolidation that
26 are peculiar to compounding pharmacies.

27 1. The cases at issue have common facts in that all involve liens for provision for compound
28

1 drugs.

2 2. The cases at issue have common facts in that all involve the prescribing and dispensing of
3 compound drugs.

4 3. The cases at issue have common facts in that compounding pharmacies lack uniform
5 pricing standards.

6 4. The cases at issue have common witnesses who are the providers and prescribers of
7 compound drugs.

8 5. The cases at issue have common issues in law related to the provision for compound
9 drugs.
10

11 ARGUMENT

12 Title 8, California Code of Regulations Section 10951 states in pertinent part, "[i]f the
13 parties do not agree to the place of hearing, the court administer shall make a determination of
14 the request for consolidation, giving due consideration to whether there are common issues of
15 fact and law as well as whether judicial economy and expediency warrant and justify the
16 request."
17

18 There are threshold issues common to every case involving compounding pharmacies
19 which could be expediently resolved by one trial. These threshold issues would shorten or
20 eliminate the need for a trial on issues which are not common. For example, the Federal Drug
21 Administration licensing of a particular pharmacy once proved, can be applied by Judicial Notice
22 to every other lien trial involving that lien claimant with out additional need for testimony,
23 witnesses or court time. Every individual case involving a compound drug furnished to an
24 injured worker requires at minimum the resolution of the following threshold issues:
25

- 26 a. The issue of manufacturing of compounding drugs which are neither FDA
27 approved, nor properly disclosed to all parties.
28

- b. The issue of improper labeling of compound drugs packaging.
- c. The issue of whether a lien claimant meets the definition of a compounding pharmacy.
- d. The issue of proper licensing of each compound pharmacy.
- e. The issue of proper application of the California Chronic Pain Medical Treatment Utilization Schedule (MTUS) Guidelines.
- f. The issue of the applicability of National Drug Codes (NDC) for compound ingredients.

The twin goals of judicial economy and expediency require consolidation; otherwise each of these issues would have to be repeatedly litigated. The same parties would appear. The same evidence would be offered. The same witnesses would testify. For example, a compounding pharmacy attempting to prove proper licensing would be required to obtain counsel to offer written proof, through the testimony of a witness, in perhaps thousands of cases instead of only once. This kind of litigation would be a tremendous waste of Judges' limited time, attorneys' time, and the resources of both lien claimants and defendants. If the consolidation occurs, it would benefit the entire workers compensation community because each of these determinations could be made only once instead of beginning anew in each case.

CONCLUSION

THE TRAVELERS INDEMNITY COMPANY AND ITS PROPERTY CASUALTY AFFILIATES, contends that consolidation is appropriate because there are a multiplicity of common issues of fact and law in the liens filed by compounding pharmacies. Judicial economy and expediency would be well served by consolidated trial of the many common threshold issues.

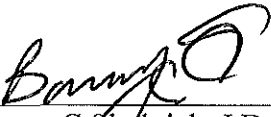
We, therefore, pray that the Workers' Compensation Appeals Board consolidate all issues

1 relating to the liens for compound pharmaceuticals.

2
3 Dated: October 28, 2010

Respectfully Submitted,

4 SCOLL & ASSOCIATES

5
6
7 BY: 
8 Barry C. Skolnick, J.D.,
9 Legal Specialist

10
11 BY: 
12 Jenilyn Cohen, Esq.

13 ATTORNEY FOR DEFENDANTS
14 The Travelers Indemnity Company of America,
15 and its Property Casualty Affiliates
16
17
18
19
20
21
22
23
24
25
26
27
28

COMMENTS ABOUT COMPOUND DRUG CONSOLIDATION

From: Abel Calderon [mailto:acalderon@gmklaw.com]

Sent: Thursday, October 21, 2010 6:06 PM

To: Kahn, Mark@DIR; Frank, Jorja@DIR

Subject: Information regarding Compound Medication from the FDA to help the WCAB in its decision regarding consolidation

Dear Judge Kahn and Judge Frank,

In response to your recent request for suggestions on how to deal with the Compound Medication Lien issue, I have contacted and received a response from a compliance officer at the United States Food and Drug Administration Los Angeles District Office (FDA). In discussing the matter with him, I asked him whether compound medications were a drug or a food. Currently, many lien claimants argue that their topical creams or gels are food because they contain food products in addition to drug products.

However, according to the compliance officer, the FDA is clear that if an item cannot be ingested, then it is not a food; and if it is not a food, then it may very well be the case that these compounded items are items that may first require FDA approval since they are more similar to a "new drug." If these items are, in fact, "new drugs" then it seems that the FDA must first approve these items before the WCAB can determine their value.

In other words, regarding compound medications, there may be a two federal threshold issues that should first be resolved before value can or should be determined: 1) whether the items require approval from the FDA (are the creams/gels are a food or a "new drug") and 2) whether the FDA considers these items safe for public use in the event that they are considered a "new drug". Please note, that the FDA cannot determine value; value is determined by the state or government agency that makes payment – Medical/Medicare. The FDA simply determines the safety and legality of the item. Furthermore, according to the compliance officer, just because a provider lists an NDC number and one matches, this does not mean that the item is necessarily approved by the FDA or safe.

Below is the contact information for the compliance officer whom I have contacted. I have also enclosed a copy of our correspondence. Maybe, your honors could convince him or someone from his office to appear at the November 4th hearing or if your honors would prefer that I try to convince him, please let me know.

John J. Stamp, Compliance Officer
Los Angeles District Domestic Compliance Branch
US Food & Drug Administration
19701 Fairchild
Irvine, CA 92612
(949) 608-4464

Regarding the emails, please start with the last email below and scroll up.

Abel Calderón Jr., Esq.
Goldman, Magdalin & Krikes, LLP
6300 Canoga Avenue, Suite 1400
Woodland Hills, CA 91367
Main: 818-755-0444
Fax: 818-755-0434
Cell: 818-939-3723
Email: acalderon@gmklaw.com

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify Abel Calderon, Jr., immediately by e-mail or by telephone at 818-775-0444 if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited. Every reasonable precaution has been taken to ensure that any attachment to this e-mail has been swept for viruses. We accept no liability for any damage sustained as a result of software viruses and advise you carry out your own virus checks before opening any attachment.

From: Stamp, John [mailto:John.Stamp@fda.hhs.gov]
Sent: Thursday, October 21, 2010 3:13 PM
To: 'Abel Calderon'
Subject: RE: Help Regarding "convenience pack" and compounded medications

Enter the NDC number from the label and see if there's an application number entered in the appropriate field.

Just to be clear – “reimbursability” wouldn't be determined by FDA. My understanding is that's a decision for Medicare, etc. to make based on their criteria which of course includes whether FDA considers it to be a legal product. That's not circular logic just a sorting out in my mind of the separate responsibilities.

From: Abel Calderon [mailto:acalderon@gmklaw.com]
Sent: Thursday, October 21, 2010 3:10 PM
To: Stamp, John
Subject: RE: Help Regarding "convenience pack" and compounded medications

John,

Regarding your last point on NDC's, is there a way to check if an NDC is approved or considered reimbursable by the FDA?

Abel Calderón Jr., Esq.
Goldman, Magdalin & Krikes, LLP
6300 Canoga Avenue, Suite 1400

Woodland Hills, CA 91367
Main: 818-755-0444
Fax: 818-755-0434
Cell: 818-939-3723
Email: acalderon@gmklaw.com

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify Abel Calderon, Jr., immediately by e-mail or by telephone at 818-775-0444 if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited. Every reasonable precaution has been taken to ensure that any attachment to this e-mail has been swept for viruses. We accept no liability for any damage sustained as a result of software viruses and advise you carry out your own virus checks before opening any attachment.

From: Stamp, John [mailto:John.Stamp@fda.hhs.gov]
Sent: Thursday, October 21, 2010 2:25 PM
To: 'Abel Calderon'
Cc: Bevill, Blake
Subject: RE: Help Regarding "convenience pack" and compounded medications

Abel,

The substance of the warning letter given to Physician Therapeutics is still current.

<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm208680.htm> .

The convenience packs listed there are still considered to be new drugs which should not be in interstate commerce without an approved application. It should be noted that the convenience pack is a combination of a drug and medical food and the new drug status only pertains to the combination product. The letter does not speak to the status of the drug portion which could be marketed separately nor does it speak to the status of the medical food portion which was not separately reviewed.

Regarding FDA's policy on compounding pharmacy you may find this compliance policy guides answers most of your questions.

<http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074398.htm> Do you have a contact at the California Board of Pharmacy? You may need to discuss with them if the pharmacy is operating in conformance with applicable state law regulating the practice of pharmacy. When operating legitimately, they would not need to get prior approval from FDA to compound or report to us. Of course the prescription by the physician is the practice of medicine and is not regulated by FDA.

Regarding the pharmacy's contention that "KetoLido" is a food, we simply need to consider the commonly understood definition of food in that it is eaten (ingested) not applied to our body to be absorbed through the skin. The mere presence of an ingredient that might be an actual food or a food ingredient isn't the determining factor. Similar claims have been made for topical products that wish to be regulated as dietary supplements. The Act specifically states [21 U.S.C. 321(ff)(2)(A)(i)] that dietary supplements are meant for ingestion and so there could not be a dietary supplement cream, nasal gel, or suppository. Intended use of the product also determines its status – see 21 CFR 201.128.

Regarding the National Drug Code, the fact that a product is listed there does not confirm a legitimate drug status. See the disclaimer on the NDC web page <http://www.fda.gov/Drugs/InformationOnDrugs/ucm142438.htm> **"THE INCLUSION OF A FIRM OR ITS PRODUCTS IN THE NDC DIRECTORY DOES NOT DENOTE APPROVAL BY THE FDA OF THE FIRM OR ANY OF ITS MARKETING PRODUCTS, NOR IS IT A DETERMINATION THAT A PRODUCT IS A DRUG AS DEFINED BY THE ACT, NOR DOES IT DENOTE THAT A PRODUCT IS COVERED BY OR ELIGIBLE FOR REIMBURSEMENT BY MEDICARE, MEDICAID, OR OTHER PAYERS."** In fact we have found that there are products in the database which are not drugs.

If I can assist you further please contact me by e-mail or phone. I will however be out of the office tomorrow.

Regards,

John

From: Abel Calderon [mailto:acalderon@gmklaw.com]
Sent: Wednesday, October 20, 2010 4:32 PM
To: Stamp, John
Subject: Help Regarding "convenience pack" and compounded medications

Dear Mr. Stamp,

Thank you very much for taking the time to return my call; I understand that you have a very busy schedule.

Per your request, this email is regarding the following:

- 1) Please update me on the status of the FDA's position regarding the item: Gaboxetine Convenience Pack (Fluoxetine 10mg and GABAdone).
 - a. Is this item still under FDA investigation or still considered as included under section 201(g) of the Act (21 USC § 321(g))?
 - i. According to documentation I have from April 2010, the FDA was investigating this product along with others.

- 2) The second question is regarding the FDA's position on compounded creams/gels dispensed by "pharmacies" or medical providers
 - a. Are there certain requirements that must be complied with before a doctor or a pharmacy can dispense/compound an item or a cream (besides licensing requirements)
 - i. In particular do they have to provide any reporting to the FDA regarding proper compounding or request approval to confirm that the items are safe for personal use?
 - ii. Are providers free to compound any item and give it out?
 - iii. For example: I have a bill from a company California Pharmacy (Tax ID# 43-1971803). They dispense medication and compound their own creams.
 1. On 01/26/2009 they dispensed a product described as "KetoLido" (Keto 10%, Lido 5% - 30gm)
 - a. The items in this product are the following: Liposome Cream Base; Polaxamer 407NF; Isopropyl Palm Hex Acid 1 ME ES; Ketoprofen USP; Lidocaine; Lecithin Granular USP; Polyethylene Poly Glycol F127; Potassium Sorbate NF; Sorbic Acid 3, 4 Hexdienoic Acid
 - i. They are arguing it is a food because of the potassium and sorbi acid
 - b. A similar company has a website showing gels they also compound (see <http://www.theapothecaryshop.com/pain-topical-gels.html>)
 2. On the same date (01/26/2009) California Pharmacy also compounded and dispensed "MenCamCap" (Men 1%, Cam .5%, Cap 0.375% - 30gm)
 - a. The items in this product are the following: Liposome creame base; Polaxamer 407NF; Isopropyl Palm Hex Acid 1 ME ES; Menthol Crystal; Camphor Synthetic; Capsaicin USP; Lecithin Granular USP; Polyethylene NF; Potassium Sorbate NF; Sorbic Acid 3, 4 Hexidienoic Acid)
 3. On 01/27/2009 California Pharmacy compounded and dispensed "KetoLid" (Ketoprflen 10%, Lidocaine 5% - 120gm). This item has the exact same ingredients as the "KetoLido" described above. And on this same date they again dispensed "MenCamCap" but this time 120gm)
 4. On 03/09/09 California Pharmacy again dispensed "KetoLido" and "MenCamCap" each for 30gm.

Just to provide you with a little history on the area of law I am practice. I am a Worker's Compensation Defense attorney who specializes in medical treatment. The reason these items have come across my desk is because I have been given the task of determining a value for these creams. Generally, the Medical or Medicare system has a value for most drugs authorized by the FDA under Workers Comp. As you can imagine, the value given by Medical or Medicare is significantly lower than the "usual and customary price" of the providers.

However, many of these "pharmaceutical providers" are trying to circumvent the system by "creating" their own compounds or "food items" so that the NDC number is not the same as the one in the Medical/Medicare system. Of course, they call it a food to avoid federal regulation. The Workers' Compensation system was created so that injured workers can quickly receive medical treatment so that they can get back to work. State law indicates that because the Workers' Compensation system is a benefits system, the cost should be closer to what Medicare or Medical pays. The problem the problem now is that this "circumventing" has caused a significant strain on the Workers' Compensation system. This is why I have been designated to try and find out if there is way to prevent this type of activity from taking place by having this act of "compounding" to fall under the FDA's jurisdiction. Otherwise, the system will have to continue to bear the burden of having these items remain as "food" and allow the providers to bill whatever amount the provider indicates.

I hope this provides you with enough information. Please fee free to contact me if you should require additional information. By the way, the Los Angeles Workers' Compensation Appeals Board will be having a subsequent session on trying to better handle this compound medication issue on Thursday, Novemeber 4, 2010 at 10AM if your schedule permits.

Thank you for your time and help with this matter.

Abel Calderón Jr., Esq.
Goldman, Magdalin & Krikes, LLP
6300 Canoga Avenue, Suite 1400
Woodland Hills, CA 91367
Main: 818-755-0444
Fax: 818-755-0434
Cell: 818-939-3723
Email: acalderon@gmklaw.com

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify Abel Calderon, Jr., immediately by e-mail or by telephone at 818-775-0444 if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited. Every reasonable precaution has been taken to ensure that any attachment to this e-mail has been swept for viruses. We accept no liability for any damage sustained as a result of software viruses and advise you carry out your own virus checks before opening any attachment.

1 CHERNOW AND LIEB
2 Attorneys at Law
3 P.O. Box 9055
4 Van Nuys, California 91409-9055
5 Telephone (818) 592-3803
6 FAX No. (818) 884-0652

7 Attorneys for Defendant
8 ZENITH INSURANCE COMPANY

9 **STATE OF CALIFORNIA**
10 **DIVISION OF WORKERS' COMPENSATION**
11 **WORKERS' COMPENSATION APPEALS BOARD**

12 LUIS ARELLANO, et al.,

13 Applicant,

14 vs.

15 SHERMAN OAKS AUTO RESORT;
16 STATE COMPENSATION INSURANCE
17 FUND, et al.

18 Defendants.

WCAB Case No.: ADJ2131629 lead

19 **PETITION FOR BIFURCATION**
20 **AND CONSOLIDATION OF**
21 **COMPOUND PHARMACY LIENS**

22 On October 6, 2010, a hearing was conducted at the Los Angeles District Office of the
23 Division of Workers' Compensation (DWC) pursuant to a Notice of Intent to Consolidate
24 and Stay All Lien Proceedings Regarding Compound Pharmacy Liens that was issued, on the
25 motion of the Court, by the Honorable Jorja Frank, Presiding Workers' Compensation Judge
26 (PWCJ). Zenith Insurance Company (Zenith), defendant in some of the cases sought to be
27 consolidated, hereby submits its Petition in support of the proposed consolidation.

28 **BACKGROUND**

At the hearing, PWCJ Frank and Associate Chief Judge Mark Kahn explained the
circumstances that gave rise to the issuance of the Notice of Intent on the Court's motion.

1 The dire economic straits in which the State of California currently finds itself have
2 necessitated various austerity measures impacting the district offices of the DWC. All DWC
3 employees are currently furloughed three days per month on which days the DWC district
4 offices are closed for business. Additionally, a freeze on hiring has prevented the DWC from
5 replacing employees lost through attrition. These conditions have both reduced staff and
6 reduced the number of days per month that the remaining staff can devote to the processing
7 of documents and adjudication of disputes, whether asserted on behalf of injured workers or
8 lien claimants.
9

10 Hundreds of liens and Declarations of Readiness to Proceed concerning lien disputes
11 are being filed every month. The current resources of the DWC are inadequate to timely
12 process and adjudicate the number of claims being asserted. As a result, a sizable backlog has
13 accumulated which continues to grow with the passage of time. Faced with the proverbial
14 flood of litigation without the resources to deal with it, Judges Frank and Kahn presented the
15 litigants with three choices:
16

- 17 1) To decide issues common to compound pharmacy liens in the context of a
18 consolidation.
19
- 20 2) To submit to a delay of what could potentially amount to many, many years to
21 obtain individual adjudications of individual liens.
22
- 23 3) To devise a workable plan for resolution of the problem that is different from
24 the above two options.

25 While there is no perfect solution to the problem, Zenith believes that the best option is
26 to consolidate all compound pharmacy lien disputes for discovery and trial before a single
27 WCJ who can then issue a decision resolving all of the designated common issues.
28

ARGUMENT

Article XIV, §4, California Constitution provides, in part:

“The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation”...[with] “full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character...”

Unfortunately, there often exists a significant discrepancy between the DWC’s obligation to determine “any dispute” arising under the workers’ compensation laws, on the one hand, and to dispense substantial justice expeditiously and inexpensively, on the other. Lien disputes are a prime example of this conflict between the ideal world and the real one. While both lien claimants and defendants are entitled to due process of law and an expeditious adjudication of their disputes, the DWC cannot comply with this Constitutional mandate if it is not provided with the necessary resources to do so.

The only viable solution to this dilemma is to devise a procedure for the adjudication of lien disputes that satisfies the Constitutional mandate. One means of expediting the adjudicatory process while preserving the due process rights of the parties, has been the consolidation of cases for discovery and/or trial. The procedure for the consolidation of workers’ compensation cases is governed by Title 8, California Code of Regulations section 10260 which provides as follows:

(a) Any request or petition to consolidate cases that are assigned to different workers' compensation administrative law judges in the same district office, or that have not been assigned but are venued at the same district office, shall be referred to the presiding workers' compensation administrative law judge of that office, whether the cases involve the same injured worker or multiple injured workers.

1 (b) Any request or petition to consolidate cases involving the same injured
2 worker that are assigned to workers' compensation administrative law judges
3 at different district offices, or that have not been assigned but are venued at
4 different district offices, shall first be referred to the presiding workers'
5 compensation administrative law judges of the district offices to which the
6 cases are assigned. If the presiding workers' compensation administrative law
7 judges are unable to agree on where the cases will be assigned for hearing, the
8 conflict shall be resolved by the court administrator upon referral by one of
9 the presiding judges.

10 (c) Any request or petition to consolidate cases involving multiple injured
11 workers that are assigned to workers' compensation administrative law judges
12 at different district offices, or that have not been assigned but are venued at
13 different district offices, shall be referred to the court administrator.

14 (d) In resolving any request or petition to consolidate cases that are assigned
15 to workers' compensation administrative law judges at different district
16 offices, or that have not been assigned but are venued at different district
17 offices, the court administrator shall set the request or petition for a
18 conference regarding the place of hearing. At or after the conference, the court
19 administrator shall determine the place of hearing and may determine the
20 workers' compensation administrative law judge to whom the cases will be
21 assigned, giving consideration to the factors set forth in California Code of
22 Regulations, title 8, section 10589. In reaching any determination, the court
23 administrator may assign a workers' compensation administrative law judge to
24 hear any discovery motions and disputes relevant to discovery in the action
25 and to report their findings and recommendations to the court administrator.

26 (e) Any party aggrieved by the determination of the court administrator may
27 request proceedings pursuant to Labor Code section 5310, except that an
28 assignment to a particular workers' compensation administrative law judge
shall be challenged only in accordance with the provisions of California Code
of Regulations, title 8, sections 10452 and 10453.

29
30 Even before the adoption of this regulation, the DWC has always had the power to
31 consolidate cases for discovery and/or trial whether those cases might involve the same
32 injured worker or different injured workers. Traditionally, pending cases involving the same
33 injured worker have been consolidated and assigned to the same WCJ for hearing. In more
34 recent times, consolidations have been based on the identity of the defendant or the identity
35 of the lien claimant or on common issues involving completely different parties. Moreover,

1 such consolidations have not been limited to cases venued at a single district office of the
2 DWC but have also involved cases filed at different DWC offices.

3 The law does not require that all of the issues in all of the cases be addressed in a
4 consolidation. The DWC has the authority to consolidate lien issues while leaving the
5 balance of the issues to proceed through the regular adjudication process. In *Argent Medical*
6 *Laboratory, Inc., et al. v. WCAB (Barrera)* (1994) 60 CCC 28 (writ denied), the WCAB
7 rejected the lien claimants' argument that the Board lacked the power to bifurcate and
8 consolidate on the lien issues only, citing considerations of "judicial economy and the power
9 of every court to do those things required in the interest of justice."
10

11 All disputes concerning liability for medical treatment liens present certain general
12 issues which can be summarized as follows:
13

- 14 1) Threshold issues (e.g. injury AOE/COE, Statute of Limitation, parts of body
15 injured)
- 16 2) Medical control (including MPN and HCO disputes)
- 17 3) Proper qualification and licensing of the medical provider
- 18 4) Reasonable medical necessity
- 19 5) Reasonable value
- 20

21 Clearly, a consolidation will not be able to address the first two issues because an
22 adjudication on the merits would be dependent on the facts of the individual case.

23 However, the last three issues are particularly suitable for determination in the context of
24 a consolidation because they involve broad questions of law and fact that are common to
25 great numbers of lien disputes. Each of these general issues will then give rise to specific
26 questions to be answered in the context of the particular consolidation. For example,
27
28

1 under the heading of reasonable value would be the question of how the value of
2 compound pharmacy liens should be calculated in the absence of a fee schedule.

3 To have a consolidation, it is not necessary that there be common issues that are
4 applicable to each and every case. The real purpose of the consolidation is to reduce the
5 parties' utilization of the limited resources of the DWC while preserving their due
6 process rights. Even if there are disputed issues that remain after a decision out of a
7 consolidation, the resolution of at least some of the disputed issues will maximize the
8 potential for settlement and will simplify and reduce any litigation of the undecided
9 issues that may become necessary.
10

11 The ordering of a consolidation does not require that there be an initial identification
12 of all of the common issues to be submitted for decision to the assigned WCJ. Consolidations
13 may be limited to discovery issues only. In fact, this procedure is especially appropriate in
14 complex consolidations where there appear to be common issues of law and fact but the
15 exact issues to be decided at trial cannot be determined until discovery has been completed.
16 Once discovery has been completed, the common issues can be identified and a
17 determination can be made that the cases should either be consolidated and decided as a unit,
18 or that they should be tried separately. (*Harvard Surgery Center, et al. v. WCAB (Yero)*
19 (2005) 70 CCC 1354, writ denied.)
20

21 Given the large number of compound pharmacy liens that would be subject to a
22 consolidation, the procedure recommended by the WCAB in *Sheffield Medical Group v.*
23 *WCAB (Aceituna)* (2004) 69 CCC 138, writ denied, (*Sheffield*) should be given serious
24 consideration. In *Sheffield*, the Board indicated that a representative sample of outstanding
25 cases should be selected in order to litigate the common issues of law and fact. The legal and
26 factual determinations could then be applied uniformly to the remaining unresolved cases. A
27
28

1 representative sample of cases was also selected in the lien consolidation in *333 Weiserlock*
2 *Workers' Cases v. WCAB* (2003) 68 CCC 1630, writ of mandate denied.

3 It would also be beneficial to expand the scope of the consolidation beyond the Los
4 Angeles District Office. The other district offices in Southern California are equally impacted
5 by the austerity measures that have prevented the Los Angeles office from complying with
6 the Constitutional mandate for expeditious and inexpensive proceedings. Therefore, it would
7 largely defeat the purpose of the consolidation to limit it to liens filed in one venue only.
8

9 While the consolidation is in effect, all proceedings on liens subject to the
10 consolidation order should be stayed. In *Sheffield*, the Appeals Board adopted the report and
11 recommendation of the WCJ in which he stated:
12

13 “Lien claimant in their Petition for Removal argues that there would
14 be irreparable harm to the lien claimant by staying these proceedings. It is the
15 opinion of the Court that there would be irreparable harm should these lien
16 claims all go to hearing individually before numerous Judges involving
17 hundreds of decisions involving the same common issues of law and fact. . . .
18 Without the Stay Order before the consolidated case or sample cases could go
19 to hearing, individual cases would be going to hearing on the common issue of
20 law and fact. Therefore, the Board disagrees with Schefffield's conclusion that
21 they would suffer irreparable harm and on the other hand indicates that the
22 irreparable harm would be to the State Compensation Insurance Fund and the
23 Court system by litigating these common issues of law and fact in sum [*sic*]
24 4,000 cases individually.”
25

26 Issuing a stay order will not prevent the parties from finding alternative methods of
27 resolving their disputes and in fact, would likely encourage informal resolution and
28 compromise. If individual medical providers/lien claimants and individual defendants are
unable to seek adjudication on a case by case basis, they will still be free to negotiate bulk
settlements that will dispose of all of their mutual disputes, saving both the DWC district
offices and the litigants time and money that would have otherwise been spent on litigation.

1 Furthermore, as was the case in *Scheffield*, the consolidation and stay order need not apply to
2 additional lien claims filed after the consolidation was ordered.

3 **CONCLUSION**

4 Defendant, ZENITH, respectfully requests that an Order issue bifurcating and
5 consolidating all compound pharmacy liens filed in all cases venued at the DWC District
6 Offices in the Southern California Region for the purpose of discovery only, and that a Stay
7 Order issue with respect to compound pharmacy liens filed prior to the date of the Order of
8 Consolidation.
9

10
11 DATED: October 27, 2010

12 Respectfully submitted,

13 CHERNOW & LIEB

14
15
16 By: 

17 PAMELA FOUST

18 Attorneys for Defendant

19 ZENITH INSURANCE COMPANY
20
21
22
23
24
25
26
27
28

Dear Judge Kahn and Judge Frank,

In response to your recent request for suggestions on [how](#) to deal with the Compound Medication Lien issue, I have contacted and received a response from a compliance officer at the United States Food and Drug Administration Los Angeles District Office (FDA). In discussing the matter with him, I asked him on whether compound medications were a drug or a food. Currently, many lien claimants argue that their topical creams or gels are food because they contain food products in addition to drug products.

However, according to the compliance officer, the FDA is clear that if an item cannot be ingested, then it not a food; and if it is not a food, then it may very well be the case that these compounded items are items that may first require FDA since they are a “new drug.” If these items are “new drugs” then it seems that the FDA must first approve the items before the WCAB can determine their value.

In other words, regarding compound medications, there may be a two federal threshold issues that should first be resolved before value can or should be determined: 1) whether the items require approval from the FDA (are the creams/gels are a food or a “new drug”) and 2) whether the FDA considers these items safe for public use in the event that they are considered a “new drug”. Please note, that the FDA cannot determine value; value is determined by the state or government agency that makes payment – Medical/Medicare. The FDA simply determines safety and legality of the item. Furthermore, according to the compliance officer, just because a provider lists an NDC number and one matches, this does not mean that the item is necessarily approved by the FDA or safe.

Below is the contact information for the compliance officer whom I have contacted. I have also enclosed a copy of our correspondence. Maybe, your honors could convince him or someone from his office to appear at the November 4th hearing or if your honors would prefer that I try to convince him, please let me know.

John J. Stamp, Compliance Officer
Los Angeles District Domestic Compliance Branch
US Food & Drug Administration
19701 Fairchild
Irvine, CA 92612
(949) 608-4464

Colleen M. Pratt (SBN 222770)s
Michael D. Ainbinder (SBN 56420)
LAW OFFICES OF AINBINDER & PRATT
5150 E. Pacific Coast Highway, Suite 720
Long Beach, CA 90804
TEL (562) 498-4600
FAX (562) 498-4602
Attorneys for LIEN CLAIMANT
NEPAC PROVIDERS, LLC

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

EAMS NO. ADJ 2132629 (LEAD CASE)

IN RE MOTION TO CONSOLIDATE
COMPOUND MEDICATION LIENS

**POINTS AND AUTHORITIES IN
OPPOSITION TO MOTION TO
CONSOLIDATE COMPOUND
MEDICATION LIENS**

Lien claimant, Nepac Providers bills for compound medications on behalf of physicians. It has pending liens at the Los Angeles Workers' Compensation Appeals Board and other Boards across Southern California. As a real party in interest and pursuant to the Court's invitation at the hearing on 10/6/10, Nepac Providers respectfully presents this Opposition to the Court's Motion to Consolidate Compound Pharmacy Liens, dated 8/24/10.

**POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO CONSOLIDATE
COMPOUND MEDICATION LIENS**

INTRODUCTION

Presiding Judge Jorja Frank of the Los Angeles WCAB cites judicial economy as the basis for the Court's own motion to consolidate all compound medication liens. Furloughs, depleted staff, and backlogged paper filings were a few reasons given by Judge Frank at the hearing of October 6, 2010 to support the consolidation.

However, and with all due respect to the Court, consolidating compound medication liens is not a solution to the Court's administrative woes (and may, in fact, add to the Court's workload as discussed *infra*). Statistically, approximately 4000 liens per month are filed in LA and of that amount, only 10% are compound medication liens. The Court's opening remarks painted a dire and imminent picture with regard to the burden caused by these types of liens, yet in reality, they are statistically not the culprits. Of the five (5) hours Judge Frank states she spends on liens daily, only 30 minutes would be spent on compound liens based on the statistics given by the Court. Considering the relatively low number of different types of treatment liens, this is hardly an impact.

Assuming *arguendo*, however, that compound liens do create an administrative toll, consolidating them would be impractical, and more importantly, would violate lien claimants' due process and equal protection rights; and when weighing the interests of judicial economy against the abridgment of fundamental rights of parties, the latter must prevail, especially in the absence of empirical data substantiating the Court's motion.

From a practical standpoint, threshold issues such as injury AOE/COE, employment and

POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO CONSOLIDATE COMPOUND MEDICATION LIENS

1 post-termination claims, would have to be litigated on a case-by-case basis seeing as every case
2 is factually distinct and lien claimants step in the shoes of the applicant for purposes of litigating
3 their liens. Consolidation would deny lien claimants their unalienable rights to prosecute their
4 liens.

5 Additionally, medical necessity issues would vary from applicant to applicant given the
6 unique responsiveness of every person to particular medications. Even a partial consolidation
7 with reference to medical necessity would thwart lien claimants' rights, insofar as they would be
8 unable to directly question particular applicants on the efficacy of the medication, and question
9 or cross-examine experts relating to the same.

11 Furthermore, the prevalence of certain types of transdermal creams or ingredients is not a
12 valid basis for consolidation. The effectiveness of active ingredients is a medical issue, not
13 suited for the judiciary or even the legislature. Such a determination is best left to physicians
14 who prescribe the medications based on their training, experience, and evaluation of the
15 applicants.

17 Finally, and as eluded to above, consolidation would not decrease the Court's docket or
18 workload. Few if any compound medication liens stand alone, i.e., most are filed on cases where
19 other treatment liens are also at issue (such as the primary treating physician, physical therapist
20 and pain management specialist to name a few.) Therefore, consolidation would actually
21 *increase* the Court's workload insofar as the compound liens would be addressed separately
22 from the others as opposed to adjudicated at the same time. Consolidation could, therefore, not

25 **POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO CONSOLIDATE**
26 **COMPOUND MEDICATION LIENS**

1 aid judicial economy, but rather, by its nature, could be judicially burdensome.

2 It would appear the only plausible issue for consolidation would be valuation of the
3 medications, which is a legislative issue. Ostensibly, it is no coincidence the motion to
4 consolidate was signed on the same day California Senate bill AB 2779, which was designed to
5 place conditions on physicians and regulate costs, failed. Although the Court asserts it is not
6 “legislating from the bench”, the effective result of a consolidation would be just that.

7
8 Accordingly, and for the reasons cited *infra*, lien claimant objects to the Court’s Motion to
9 Consolidate.

10
11 **A. THERE ARE NO COMMON ISSUES OF LAW OR FACT UNDERLYING THE**
12 **COMPOUND MEDICATION LIENS**

13 Common issues of law and fact cannot and DO NOT underlie the hundreds of liens filed
14 because each case is legally and factually distinct. Lien claimants are exhaustively reminded by
15 judges and defense attorneys that they step in the shoes of the applicant, and therefore, must not
16 only prove medical necessity and reasonableness of the charges, but also must prove threshold
17 issues, including but not limited to, whether the injury arose out of the course and scope of the
18 applicant’s employment, general versus special employment, and overcoming post-termination
19 defenses. Every case, by virtue of having different applicants, mechanisms of injury,
20 employment, and medical issues, will have different underlying facts. There are innumerable
21 factual scenarios creating distinct legal issues, which must be adjudicated on a case-by-case
22
23

24
25 **POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO CONSOLIDATE**
26 **COMPOUND MEDICATION LIENS**

1 basis.

2 The only obvious and unspoken common fact is the lack of a reimbursement structure,
3 which will be addressed below.

4
5 **B. CONSOLIDATION WILL NOT CREATE JUDICIAL ECONOMY**

6 **1. Consolidating the Compound Medication Liens Will Not Lessen the Court's**
7 **Dockets as Other Liens on the Same Case-in-Chief, as well as Issues Regarding**
8 **the Compound Lien, Will Still Require Adjudication.**
9

10 Most, if not all, compound medication liens are filed alongside other treatment liens on the
11 same case. Therefore, the same issues that pertain to all liens, such as Medical Provider Network
12 issues, statute of limitation issues, etc. will apply to all lien claimants on the case. Separating the
13 compound medication liens will add additional hearings to address the same issues as the other
14 lien holders on the same case, which would be judicially *uneconomical*. In fact, partial
15 consolidation of the compound liens could result in the very compound lien consolidated to be
16 tried on other issues.
17

18
19 **2. Consolidation on Discovery Issues is Unnecessary and Will Not Save the**
20 **Court Time**
21

22 Some suggest that consolidation on discovery matters is necessary to resolve threshold
23 licensing issues, etc. This is a red herring. On the vast majority of liens, licensing is not an
24

25 **POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO CONSOLIDATE**
26 **COMPOUND MEDICATION LIENS**
27

1 issue. To the contrary, medical necessity and reasonableness remain the crux of litigation, which
2 will vary from case to case depending on the facts and evidence. The Court should not
3 consolidate the entire class due to a minority of cases with ancillary issues. Defense attorneys
4 have the right to conduct discovery to ascertain documents or information on individual cases
5 without the need for consolidation. There is no overwhelming evidence, or any evidence at all, to
6 support the need for consolidation regarding licensing issues.

7
8 Furthermore, any other discovery issues involving the compounds themselves will be
9 divergent because not all compound medications contain the same formulas; yet even if they did,
10 each lien holder has the right to present evidence regarding medical necessity pertaining to the
11 particular applicant, and to seek reimbursement based on the fee schedule (if applicable) or usual
12 and customary principles (where the ingredients' NDC numbers are not contained in the Medi-
13 Cal data base.) Unless the Court intends on determining a value for the medications, which it
14 cannot, then consolidation for this reason is an unfeasible option.
15

16
17 **C. THE COURT CANNOT CONSOLIDATE IN ORDER TO DETERMINE THE VALUE**
18 **OR REASONABLENESS OF THE COMPOUND MEDICATION**

19 With regard to reimbursement of medical treatment in general, *Labor Code* §5307.1
20 empowers the Administrative Director (AD) to adopt an official medical fee schedule (OMFS)
21 that establishes reasonable maximum fees paid for medical services. The fees are in accordance
22 with the fee-related structure and rules of the relevant Medicare and Medi-Cal payment systems.
23

24
25 **POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO CONSOLIDATE**
26 **COMPOUND MEDICATION LIENS**

1 Although section 5307.1 envisions a comprehensive OMFS encompassing all services
2 authorized in *Labor Code* §4600, it does not limit insurance companies' liability to treatment
3 options actually covered by the OMFS. The exclusion or omission of certain modalities or
4 medical treatment, including compound medications, does not mean that they are not
5 reimbursable. Rather, there are established alternative methods of valuation espoused in
6 prevailing case law. (*See Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases
7 1588).
8

9 If the intent of the consolidation is to determine the value of certain raw ingredients or
10 commonly dispensed creams, then such action would contravene the role of the judiciary,
11 violating the doctrine of separation of powers.
12

13 **D. CERTAIN COMPOUNDS AND ACTIVE INGREDIENTS DO NOT HAVE NDC**
14 **NUMBERS RECOGNIZED BY THE MEDI-CAL DATABASE, BUT THIS CANNOT BE**
15 **RESOLVED BY A CONSOLIDATION OF ALL COMPOUND LIENS.**
16

17 Insurers lament about the inability to input NDC numbers for certain compound
18 medications and ingredients into the DWC website for a value. However, not all compounds and
19 ingredients have recognizable NDC numbers; but this doesn't mean bill reviewers can arbitrarily
20 assign a value.
21

22 Although at first blush it appears that *CA Code of Regulations* §9789.40 dealing with
23 medication reimbursement would apply to all compounds, it does not.
24

25 **POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO CONSOLIDATE**
26 **COMPOUND MEDICATION LIENS**
27

1 Section 9789.40(a) reads:

2 “The maximum reasonable fee for pharmaceuticals and pharmacy services rendered after
3 January 1, 2004 is 100% of the reimbursement prescribed in the relevant Medi-Cal
4 payment system, including the Medi-Cal professional fee for dispensing.”

5 The Medi-Cal database, however, generally only deals with generic or
6 repackaged medications, and not raw ingredients which make up the compounds. Although this
7 fact perplexes insurance carriers and their defense counsel, it cannot be avoided.

8 Subsection (2) would appear to provide further reimbursement guidance, but it too falls
9 short. Said section reads:

10 “If the National Drug Code for the drug product as dispensed is not in the Medi-Cal
11 database and the National Drug Code for the underlying drug product from the original
12 labeler is not in the Medi-Cal database, then the maximum fee shall be 83 percent of the
13 average wholesale price of the lowest priced therapeutically equivalent drug, calculated
14 on a per unit basis, plus the professional fee allowed by subdivision (b) of this section.”

15 Ostensibly, a simple solution would be to find a therapeutic equivalent and assign its
16 NDC number to the compound. *However, the FDA does not recognize the fact that there could
17 be a therapeutic equivalent to a compound, and therefore, does not rate raw ingredients.*

18 The regulation defines a “therapeutically equivalent drug” as

19 (1) “drugs that have been assigned the same Therapeutic Equivalent Code starting with
20 the letter “A” in the Food and Drug Administration’s publication “Approved Drug
21 Products with Therapeutic Equivalence Evaluations” (“Orange Book”).

22 (2) “National Drug Code for the underlying drug product from the original labeler”
23 means the National Drug Code of the drug product actually utilized by the repackager in
24 producing the repackaged product.

25 Since there are no “therapeutic equivalents”, the formula set forth in the OMFS is not

26 **POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO CONSOLIDATE**
27 **COMPOUND MEDICATION LIENS**

1 appropriate to determine reimbursement for many compounded medications. A simplistic view
2 of this anomaly is the sum of the parts does not equal the whole.

3 Accordingly, the appropriate measure of reimbursement defaults to the usual and
4 customary charges of the provider, pursuant to the *Kunz* case, *supra*; and until there is legislation
5 that addresses the issue, prevailing case law governs and cannot be circumvented by defendants,
6 insurance companies, or any other entity other than the law making body of our system.

7
8 It is incumbent upon the lien claimant to present evidence with reference to its usual and
9 customary charges. The factors used in determining usual and customary reimbursement have
10 been exhaustively addressed by both administrative and judicial tribunals. As the Court stated in
11 *Kunz v. Patterson Flooring Coverings*,

12 “When provider fees or treatments are not subject to the Official Medical Fee Schedule, a
13 provider’s fee must still be ‘reasonable’. Labor Code Sec. 4600. In determining the
14 reasonableness of a provider’s fee the Board may take into consideration a number of
15 factors, including, but not limited to, the medical provider’s usual fee, the usual fee of
16 other providers in the geographical area in which the services were rendered, other
17 aspects of the economics of the medical provider’s practice that are relevant, and any
18 unusual circumstances of the case. *In the absence of persuasive rebuttal evidence from
the defendant (employer), the provider’s billing, by itself will normally provide
adequate proof that the fee being billed is what the provider usually accepts for the
services rendered.*” (Emphasis added).

19 Consolidation simply cannot resolve the issue of valuation and any judicial attempt to do
20 so by way of consolidation would be an act in excess of its powers.
21
22
23
24

25 **POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO CONSOLIDATE**
26 **COMPOUND MEDICATION LIENS**

1

2 **E. CONSOLIDATION WILL HAVE A CHILLING EFFECT ON THE**

3 **PROVISION OF VITAL MEDICAL TREATMENT**

4 Custom compounding of medicine has been practiced by pharmacists since the earliest

5 days of pharmacy, and has been utilized by physicians for decades. In fact, there was a time

6 when all medicines were custom made. The solutions found in IVs, anesthesia, and

7 chemotherapy are all compounded.

8

9 In the 1950s, large pharmaceutical companies appeared and changed the way medications

10 were made. They were able to manufacture medicine on a large scale to serve many patients.

11 Around the same time, insurance companies started affecting the way medicine was prescribed

12 by doctors and filled by pharmacists, changing pharmacists' role to compounding less and

13 dispensing more.

14

15 Because every injured worker is different and has different medical needs, customized,

16 compounded medications are a vital part of quality medical care in the workers' compensation

17 system. For many injured workers, personalized medications are the only way to better health

18 (and help reduce the risk of additional internal claims and drug dependency). Applicants have

19 unique health care needs that off-the-shelf prescription medications just cannot meet. However,

20 due to the higher cost of compound medications (versus repackaged/commercial medications)

21 physicians have been met with fervent resistance from both insurance companies and workers'

22 compensation judges alike. The fact that compounds do not fit into an insurance "cubby hole" is

23

24

25 **POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO CONSOLIDATE**

26 **COMPOUND MEDICATION LIENS**

1 not reason, sufficient or otherwise, for a radical consolidation effort.

2 At the time of the Court's motion, no such motion to consolidate has ever been raised
3 against a particular *class* of medicine. If the Court's motion is effectuated, compound lien
4 holders would be treated differently than other treatment lien claimants without a basis, rational
5 or otherwise, in violation of lien claimants' equal protection rights.

6 Further, compound medicine lien claimants provide vital medical treatment to injured
7 workers on a lien basis. Consolidating all compound medication liens and attempting to assign a
8 value outside what current codified and case law dictates, will have a chilling effect on treating
9 physicians who dispense compound medications because of the uncertainty of reimbursement
10 and fear of unlawful reductions. Said effect will undermine the purpose and goal of the
11 California workers' compensation system which is to rehabilitate injured workers and return
12 workers to the open labor market. It is beneficial to injured workers to have the rights of those
13 providing them with professional services (lien claimants) adequately observed and protected.
14
15
16

17 CONCLUSION

18 The Court's *sua sponte* motion to consolidate is unprecedented. Although in the past the
19 Court has consolidated liens with reference to a particular medical provider (Premier Medical,
20 for instance), the present attempt lacks the requisite commonality of law and/or fact.

21 The Premier Medical consolidation dealt with allegations pertaining to Premier's business
22 organization, practices, and procedures. There was a singular issue, which spanned the entirety
23
24

25 POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO CONSOLIDATE 26 COMPOUND MEDICATION LIENS

1 of the class of liens, regardless of the treatment type. The underlying issue was whether the lien
2 claimant's activities would preclude them from collecting on approximately \$70 million in liens.
3 Therefore, that issue necessarily had to be addressed before the merits of the liens, because
4 resolution of the former would negate the latter.

5 The Premier consolidation appeared to be a proper application of the Court's power to
6 consolidate as there was an overriding issue effecting the *compensability* of the liens. With
7 regard to compound liens, however, there is no such singular commonality, nor underlying issue
8 necessitating consolidation.

10 To consolidate all compound medication liens would be an abridgment of lien claimants'
11 due process rights. Lien claimants have substantial interests in these cases and have the
12 unfettered right to be heard at trial in order to protect the same. They have the right to adequate
13 notice of issues to be raised in *each particular case*, to receive copies of medical reports filed or
14 introduced into evidence pertaining to *each case* and to enter objections pertaining to same, and
15 to offer evidence and cross-examine witnesses with regard to threshold issues, medical necessity
16 and reasonableness. To consolidate all compound liens would effectively thwart these
17 fundamental rights.

19 Even if the issue of the value of the medications was consolidated, lien claimants would
20 still be entitled to present evidence pertaining to their usual and customary charges, payments
21 received by a specific carrier, and payments made by others similarly situated within
22 geographical confines. Hearings would have to be held to address these issues, which would not
23

25 **POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO CONSOLIDATE**
26 **COMPOUND MEDICATION LIENS**

1 decrease the court's dockets, but rather, would add thereto. Said increase would result in
2 protracted litigation, further infringing on lien claimant's fundamental right to be heard.

3 Defense firms and adjusters (and even some judges) blame lien claimants for the existence
4 of thousands of unresolved liens, when the reality is, defendants' refusal to negotiate, settle, or
5 even take phone calls from lien claimants is what impedes resolution. Lien claimants are forced
6 to file DORs just to get defendants to the negotiation table. Lien claimants do not favor filing
7 DORs as it is time consuming, expensive, and more importantly, wastes precious Court
8 resources. However, they are forced to request a hearing date due to unresponsive defendants
9 unwilling to even return a phone call. It is disingenuous for defendants to now claim that Court
10 intervention is the only way to deal with these "problematic" compound medication liens.
11

12 For the foregoing reasons, lien claimant respectfully requests no action be taken on the
13 Court's Motion to Consolidate.
14

15
16 DATED: October 25, 2010

LAW OFFICES OF AINBINDER & PRATT

17 /S/

18 _____
19 Michael D. Ainbinder
20 Colleen M. Pratt
21 Attorneys for Lien Claimant
22 NEPAC PROVIDERS, LLC
23
24

25 **POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO CONSOLIDATE**
26 **COMPOUND MEDICATION LIENS**

STATE
COMPENSATION
INSURANCE
FUND

IN REPLY REFER TO:

October 20, 2010

Division of Workers' Compensation
320 W. Fourth St., 9th Floor
Los Angeles, CA 90013

Division of Workers' Compensation
6150 Van Nuys Blvd., Room 105
Van Nuys, CA 91401

Attn: WCJ Frank

WCJ Kahn

Re: Compound Pharmacy Consolidation

Your Honors:

Thank you for the opportunity to participate in the Compounding Pharmacy Consolidation at the Los Angeles DWC. (Luis Arellano v. Sherman Oaks Auto Resort) ADJ2131629 (Lead case).

State Fund is committed to the Global Resolution of all pharmacy liens as set forth in your motion which was previously set on October 5, 2010.

At this time State Fund will seek an expansion of the litigation to include all liens filed at all WCAB Boards which involve claims between the individual pharmacies and State Fund.

A copy of the following petitions for consolidation are included:

1. United Services Plus DBA Ronco Drug Pharmacy
2. The Prescription Center Pharmacy
3. RX Funding Solutions
4. Priority First Professional Services
5. Physicians Funding Solutions
6. PhyMed, Inc.
7. New Age Pharmaceuticals, Inc.
8. NCL Pharmaceuticals, Inc.
9. DNM Pharmacy
10. Life Pharmaceutical Management

These consolidations are limited to those pharmacies which have claims in excess of \$100k.

LEGAL DEPARTMENT
655 North Central Avenue • Glendale, CA 91203-1400
(818) 291-7100
Mailing Address: P.O. Box 92622 • Los Angeles, CA 90009-2622

Page: 2

Re: Compound Pharmacy Consolidation

State Fund has not included consolidations for California Pharmacy Management and Dr. Capen as they have been resolved per a Global Settlement Agreement for all Date of Service prior to 3/1/07. The balance of the liens are currently being negotiated.

In addition State Fund has not filed for consolidation for the following entities:

1. SD County Medical Association
2. Physicians RX Network
3. Panther Pharmaceutical Service
4. Ali Mumtaz A

State Fund believes that due to the smaller dollar amounts of these liens and with the assistance of the DWC, they may be resolved through expedited negotiation.

At this time, State Fund requests that a Status Conference be set with each of the entities set forth herein so that we might explain the information required to begin the negotiation process.

State Fund remains open to ADD any additional pharmacies at the request of the DWC.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Wilson". The signature is fluid and cursive, with the first name "Robert" being the most prominent.

Robert A. Wilson
Attorney

gt
encl.

1 Robert A. Wilson, (SBN 102943)
2 State Compensation Insurance Fund
3 655 North Central Avenue, Suite 400
4 Glendale, CA 91203-1400

5 Mailing Address: P.O. Box 92622
6 Los Angeles, CA 90009-2622

7 Telephone: 818-550-5340
8 Fax: 818-291-7356

9 Attorney for Defendant
10 State Compensation Insurance Fund

11 WORKERS' COMPENSATION APPEALS BOARD
12 STATE OF CALIFORNIA
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BARBEE, CHRISTOPHER(03028168)MASTER FILE

Case No. ADJ672127

Applicant,

LIFE PHARMACEUTICAL MANAGEMENT

Lien Claimant,

v.

CLEARVIEW GLASS SYSTEMS,
INCORPORATED; STATE COMPENSATION
INSURANCE FUND,

Defendants.

**PETITION FOR
CONSOLIDATION
PURSUANT TO 8 CAL
CODE OF REGS 10589
AND REQUEST FOR
STAY OF PROCEEDINGS**

State Compensation Insurance Fund (State Fund) submits this Petition for Consolidation pursuant to 8 Cal Code Regs 10589 and 10591 and request for stay of proceedings.

At this time State Fund limits the scope of the Petition for Consolidation for the limited purpose of conducting reasonable discovery and settlement negotiations.

1 **State Fund reserves the right to Petition to expand the consolidation for purposes of**
2 **litigation if necessary.**

3 Due to inadequate funding and a depletion of qualified personnel, the Workers'
4 Compensation Appeals Board cannot adequately litigate the medical liens being filed
5 individually at the various Workers' Compensation Appeals Boards.

6 **On August 23, 2010 the Los Angeles District Office of the Workers'**
7 **Compensation Appeals Board filed a "Motion to Consolidate and Stay all Lien**
8 **Proceedings regarding Compound Pharmacy Liens" in the Master case of Luis**
9 **Arellano ADJ2131629.**

10 The Board identified 21 separate pharmacies along with numerous "alleged"
11 compounds which are common to these entities.

12 The entities are as follows:

13 Cal Pharmacy Management
14 DNM Pharmacy
15 Landmark Medical Management
16 Life Pharmaceutical Management
17 NCL Pharmacy
18 New Age Pharmaceuticals
19 Panther Pharmacy Management
20 Phymed Inc
21 Physician Funding
22 Physician Rx Network
23 Priority First Professional
24 Rx Funding
25 Sun Life Funding
26 The Prescription Center Pharmacy
27 United Services Plus

28 The liens of Cal Pharmacy Management and Dr. Capen have resolved through
an existing Global Settlement Agreement.

The compounds are as follows:

Amitriptyline DT
Capsaicin
Dendracin
Diclofenac

1 Gabapentin
Ketoprofen
2 Dextromethorphan
Cycloprofen
3 Cyclobenzaprine
Fluribiprofen
4 GKL Transdernal
Lidoderm/Lidocaine
5 Orpheadrine
Sertaline
6 Transdermal compound

7 The motion filed by the Los Angeles WCAB is limited to only those lien claims
8 which have been filed at the Los Angeles Board.

9 State Compensation Insurance Fund welcomes the opportunity to assist in the
10 resolution of the medical lien road block at the Los Angeles WCAB, however we believe
11 that the most efficient utilization of resources require expansion of the scope of the
12 consolidation to include all medical lien issues between State Compensation Insurance
13 Fund and each of the individual entities identified by the Board in their motion to
14 consolidate. The consolidation should not be limited to the Los Angeles District office.

15 At this time, State Fund is unable to determine the exact scope of the potential
16 liability of these liens in that State Fund systems do not segregate procedures through
17 identification of individual compounds.

18 Extensive discovery is needed on a global basis to assess the risk of litigation and
19 to obtain adequate settlement authority.

20 State Fund needs to identify the proper parties pursuant to Labor Code § 10550
21 before negotiations can be evaluated.

22 Discovery would be extended to include the following common issues of law and
23 fact.

- 24 1. Has the pharmacy been properly licensed by the California Pharmacy Board to
25 institute compound medications in the State of California, Business
26

1 Professions Code 4000, et seq., Board of Pharmacy Regs Title 16 Sec 1700 et
2 seq.

3 2. Does a contract rate exist between State Fund and the pharmacy through
4 Express Scripts relationship.

5 3. Do the medications identified by the WCAB in its motion to consolidate
6 constitute "compound" drugs which are exempt from Federal Food and Drug
7 Administration (FDA) regulations.

8 Common issues exist to determine whether the compounds are unique as to
9 each patient or are they substantially commercially available compounds.

10 4. Has the medical doctor adequately explained the necessities of a "compound"
11 through the prescription and medical reports.

12 5. Who actually performs the compounding function.

13 6. What is the source and cost of the components involved in the compounding.

14 7. Was authorization for compound medication requested pursuant to through
15 Utilization Review pursuant to CCR § 9792.6(o).

16 8. What is the reasonable value of the compounded medications.

17 9. Does the lien claimants itemization provide adequate information to
18 determine reasonableness setting forth the following factors::

19 a. National Drug Control (NDC)

20 b. Quantity

21 c. List of items charged

22 d. Name of each active ingredient

23 e. Name of each inert ingredient

24 f. The proportion of each ingredient in the compounded medication

25 10. With respect to application of CCR § 9789.40 is the date of service prior to or
26 subsequent to March 1, 2007.

1 11. Has the provider complied with reg. CCR 1716.1 in regards to 72 hours
2 samples and whether a proper follow up prescription has been supplied.

3 12. Does lien claimant assert any other claims for reimbursement other than
4 compound medications.

5 Each of the entities referred to herein, have filed medical treatment liens to pursue
6 additional payment for the payment of the compound medications.

7 It is anticipated that the medical liens will involve several thousand claims, each
8 of which would involve a separate hearing at the Workers' Compensation Appeals Board.

9 Consolidation allows the Workers' Compensation Appeals Board to avoid
10 multiple trials on the same issue and with the same parties, and to provide a more
11 consistent outcome.

12 Given the potential that some of these entities may have filed liens venue in
13 Boards other than the Los Angeles WCAB, State Fund specifically requests that this
14 consolidation be venue at the Van Nuys WCAB under the supervision of Chief Workers'
15 Compensation Judge Mark L. Kahn.

16 State Fund respectfully requests that a stay of all proceedings relating to all named
17 entities against State Compensation Insurance Fund be granted. The request for stay
18 includes, but is not limited to, suspension of actions to bring liens to Conference and/or
19 Trial as well as cancellation of trials on lien-related issues that are already scheduled.

20 State Fund agrees that a list of claims will be provided to the WCAB when
21 discovery regarding identification of all claims is completed.

22 Nothing in this Petition shall neither be construed as a waiver by State Fund of
23 any defenses against lien claimants. State Fund does not waive the right to seek credit
24 and/or reimbursement or any other rights to which State Fund may be entitled against lien
25 claimant.

1 **WHEREFORE**, State Compensation Insurance Fund respectfully requests that in
2 the interest of judicial economy, evidence duplication of discovery and trial associated
3 preparation costs and for all other reasons indicated above, this Court:

- 4 1. Consolidate for purposes of Discovery and settlement all lien claims of the
5 above described entity against State Compensation Insurance Fund.
6 2. Issue a stay of all WCAB set forth herein, and
7 3. Allow parties to submit a list of lien claims subject hereto at the close of
8 discovery.

9
10 Dated: October 19, 2010

Respectfully submitted,

11 STATE COMPENSATION INSURANCE
12 FUND

13
14 By:


Robert A. Wilson, Attorney

1 **PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5**

2 I declare that I am employed in the County of , State of California. I am over the
3 age of eighteen years and not a party to the within entitled cause. My business address is:
4 655 N. Central Ave., Glendale, CA 91203 . On October 21, 2010, I served the attached
5 **PETITION FOR CONSOLIDATION PURSUANT TO 8 CAL CODE OF REGS**
6 **10589 AND REQUEST FOR STAY OF PROCEEDINGS** on the interested parties in
7 said cause, by placing a true copy thereof, enclosed in an envelope addressed as follows:

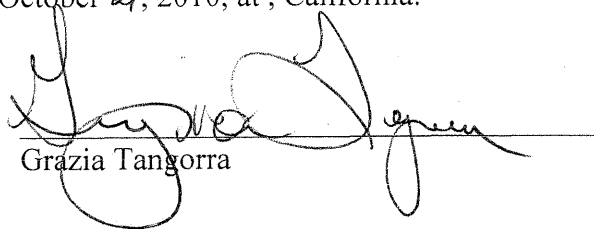
8
9 Division of Worker's Compensation
6150 Van Nuys Blvd., Room 105
10 Van Nuys, CA 91401

11 Division of Workers' Compensation
320 W. Fourth St. 9th Floor
12 Los Angeles, CA 90013

13 Life Pharmaceutical Management
14 13896 Harbor Blvd., Unit C
Garden Grove, CA 92843
15

16 I am readily familiar with the firm's practice of collection and processing
17 correspondence for mailing. Under that practice such envelope would be sealed and
18 deposited with U.S. postal service on that same day with postage thereon fully prepaid at ,
19 California in the ordinary course of business. I am aware that on motion of the party
20 served, service is presumed invalid if postal cancellation date or postage meter date is
21 more than one day after the date of deposit for mailing in this affidavit.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on October 21, 2010, at , California.

24
25 
26 Grazia Tangorra
27
28

STATE
COMPENSATION
INSURANCE
FUND

IN REPLY REFER TO:

October 20, 2010

Division of Workers' Compensation
320 W. Fourth St., 9th Floor
Los Angeles, CA 90013

Division of Workers' Compensation
6150 Van Nuys Blvd., Room 105
Van Nuys, CA 91401

Attn: WCJ Frank

WCJ Kahn

Re: Compound Pharmacy Consolidation

Your Honors:

Thank you for the opportunity to participate in the Compounding Pharmacy Consolidation at the Los Angeles DWC. (Luis Arellano v. Sherman Oaks Auto Resort) ADJ2131629 (Lead case).

State Fund is committed to the Global Resolution of all pharmacy liens as set forth in your motion which was previously set on October 5, 2010.

At this time State Fund will seek an expansion of the litigation to include all liens filed at all WCAB Boards which involve claims between the individual pharmacies and State Fund.

A copy of the following petitions for consolidation are included:

1. United Services Plus DBA Ronco Drug Pharmacy
2. The Prescription Center Pharmacy
3. RX Funding Solutions
4. Priority First Professional Services
5. Physicians Funding Solutions
6. PhyMed, Inc.
7. New Age Pharmaceuticals, Inc.
8. NCL Pharmaceuticals, Inc.
9. DNM Pharmacy
10. Life Pharmaceutical Management

These consolidations are limited to those pharmacies which have claims in excess of \$100k.

LEGAL DEPARTMENT
655 North Central Avenue • Glendale, CA 91203-1400
(818) 291-7100
Mailing Address: P.O. Box 92622 • Los Angeles, CA 90009-2622

Page: 2

Re: Compound Pharmacy Consolidation

State Fund has not included consolidations for California Pharmacy Management and Dr. Capen as they have been resolved per a Global Settlement Agreement for all Date of Service prior to 3/1/07. The balance of the liens are currently being negotiated.

In addition State Fund has not filed for consolidation for the following entities:

1. SD County Medical Association
2. Physicians RX Network
3. Panther Pharmaceutical Service
4. Ali Mumtaz A

State Fund believes that due to the smaller dollar amounts of these liens and with the assistance of the DWC, they may be resolved through expedited negotiation.

At this time, State Fund requests that a Status Conference be set with each of the entities set forth herein so that we might explain the information required to begin the negotiation process.

State Fund remains open to ADD any additional pharmacies at the request of the DWC.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Wilson". The signature is fluid and cursive, with the first name "Robert" being the most prominent.

Robert A. Wilson
Attorney

gt
encl.

1 Robert A. Wilson, (SBN 102943)
2 State Compensation Insurance Fund
3 655 North Central Avenue, Suite 400
4 Glendale, CA 91203-1400

5 Mailing Address: P.O. Box 92622
6 Los Angeles, CA 90009-2622

7 Telephone: 818-550-5340
8 Fax: 818-291-7356

9 Attorney for Defendant
10 State Compensation Insurance Fund

11 WORKERS' COMPENSATION APPEALS BOARD
12 STATE OF CALIFORNIA

13 GROOMES STAMPS, MELISSIA
14 (05171660) MASTER FILE

15 Applicant,

16 DNM PHARMACY

17 Lien Claimant,

18 v.

19 SHIELDS FOR FAMILIES NORMA MTUME;
20 STATE COMPENSATION INSURANCE FUND,

21 Defendants.

Case No. ADJ2085208

**PETITION FOR
CONSOLIDATION
PURSUANT TO 8 CAL
CODE OF REGS 10589
AND REQUEST FOR
STAY OF PROCEEDINGS**

22 State Compensation Insurance Fund (State Fund) submits this Petition for
23 Consolidation pursuant to 8 Cal Code Regs 10589 and 10591 and request for stay of
24 proceedings.

25 **At this time State Fund limits the scope of the Petition for Consolidation for**
26 **the limited purpose of conducting reasonable discovery and settlement negotiations.**
27
28

2010 OCT 21 AM 11:35
DEPT OF INDUSTRIAL RELATIONS
DMC/WCAB

1 **State Fund reserves the right to Petition to expand the consolidation for purposes of**
2 **litigation if necessary.**

3 Due to inadequate funding and a depletion of qualified personnel, the Workers'
4 Compensation Appeals Board cannot adequately litigate the medical liens being filed
5 individually at the various Workers' Compensation Appeals Boards.

6 **On August 23, 2010 the Los Angeles District Office of the Workers'**
7 **Compensation Appeals Board filed a "Motion to Consolidate and Stay all Lien**
8 **Proceedings regarding Compound Pharmacy Liens" in the Master case of Luis**
9 **Arellano ADJ2131629.**

10 The Board identified 21 separate pharmacies along with numerous "alleged"
11 compounds which are common to these entities.

12 The entities are as follows:

13 Cal Pharmacy Management
14 DNM Pharmacy
15 Landmark Medical Management
16 Life Pharmaceutical Management
17 NCL Pharmacy
18 New Age Pharmaceuticals
19 Panther Pharmacy Management
20 Phymed Inc
21 Physician Funding
22 Physician Rx Network
23 Priority First Professional
24 Rx Funding
25 Sun Life Funding
26 The Prescription Center Pharmacy
27 United Services Plus

28 The liens of Cal Pharmacy Management and Dr. Capen have resolved through
an existing Global Settlement Agreement.

The compounds are as follows:

Amitriptyline DT
Capsaicin
Dendracin
Diclofenac

1 Gabapentin
Ketoptofen
2 Dextromethorphan
Cycloprofen
3 Cyclobenzaprine
Fluribiprofen
4 GKL Transdermal
Lidoderm/Lidocaine
5 Orpheadrine
Sertaline
6 Transdermal compound

7 The motion filed by the Los Angeles WCAB is limited to only those lien claims
8 which have been filed at the Los Angeles Board.

9 State Compensation Insurance Fund welcomes the opportunity to assist in the
10 resolution of the medical lien road block at the Los Angeles WCAB, however we believe
11 that the most efficient utilization of resources require expansion of the scope of the
12 consolidation to include all medical lien issues between State Compensation Insurance
13 Fund and each of the individual entities identified by the Board in their motion to
14 consolidate. The consolidation should not be limited to the Los Angeles District office.

15 At this time, State Fund is unable to determine the exact scope of the potential
16 liability of these liens in that State Fund systems do not segregate procedures through
17 identification of individual compounds.

18 Extensive discovery is needed on a global basis to assess the risk of litigation and
19 to obtain adequate settlement authority.

20 State Fund needs to identify the proper parties pursuant to Labor Code § 10550
21 before negotiations can be evaluated.

22 Discovery would be extended to include the following common issues of law and
23 fact.

- 24 1. Has the pharmacy been properly licensed by the California Pharmacy Board to
25 institute compound medications in the State of California, Business
26

1 Professions Code 4000, et seq., Board of Pharmacy Regs Title 16 Sec 1700 et
2 seq.

3 2. Does a contract rate exist between State Fund and the pharmacy through
4 Express Scripts relationship.

5 3. Do the medications identified by the WCAB in its motion to consolidate
6 constitute "compound" drugs which are exempt from Federal Food and Drug
7 Administration (FDA) regulations.

8 Common issues exist to determine whether the compounds are unique as to
9 each patient or are they substantially commercially available compounds.

10 4. Has the medical doctor adequately explained the necessities of a "compound"
11 through the prescription and medical reports.

12 5. Who actually performs the compounding function.

13 6. What is the source and cost of the components involved in the compounding.

14 7. Was authorization for compound medication requested pursuant to through
15 Utilization Review pursuant to CCR § 9792.6(o).

16 8. What is the reasonable value of the compounded medications.

17 9. Does the lien claimants itemization provide adequate information to
18 determine reasonableness setting forth the following factors::

19 a. National Drug Control (NDC)

20 b. Quantity

21 c. List of items charged

22 d. Name of each active ingredient

23 e. Name of each inert ingredient

24 f. The proportion of each ingredient in the compounded medication

25 10. With respect to application of CCR § 9789.40 is the date of service prior to or
26 subsequent to March 1, 2007.

1 11. Has the provider complied with reg. CCR 1716.1 in regards to 72 hours
2 samples and whether a proper follow up prescription has been supplied.

3 12. Does lien claimant assert any other claims for reimbursement other than
4 compound medications.

5 Each of the entities referred to herein, have filed medical treatment liens to pursue
6 additional payment for the payment of the compound medications.

7 It is anticipated that the medical liens will involve several thousand claims, each
8 of which would involve a separate hearing at the Workers' Compensation Appeals Board.

9 Consolidation allows the Workers' Compensation Appeals Board to avoid
10 multiple trials on the same issue and with the same parties, and to provide a more
11 consistent outcome.

12 Given the potential that some of these entities may have filed liens venue in
13 Boards other than the Los Angeles WCAB, State Fund specifically requests that this
14 consolidation be venue at the Van Nuys WCAB under the supervision of Chief Workers'
15 Compensation Judge Mark L. Kahn.

16 State Fund respectfully requests that a stay of all proceedings relating to all named
17 entities against State Compensation Insurance Fund be granted. The request for stay
18 includes, but is not limited to, suspension of actions to bring liens to Conference and/or
19 Trial as well as cancellation of trials on lien-related issues that are already scheduled.

20 State Fund agrees that a list of claims will be provided to the WCAB when
21 discovery regarding identification of all claims is completed.

22 Nothing in this Petition shall neither be construed as a waiver by State Fund of
23 any defenses against lien claimants. State Fund does not waive the right to seek credit
24 and/or reimbursement or any other rights to which State Fund may be entitled against lien
25 claimant.

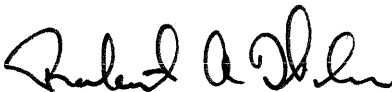
1 **WHEREFORE**, State Compensation Insurance Fund respectfully requests that in
2 the interest of judicial economy, evidence duplication of discovery and trial associated
3 preparation costs and for all other reasons indicated above, this Court:

- 4 1. Consolidate for purposes of Discovery and settlement all lien claims of the
5 above described entity against State Compensation Insurance Fund.
6 2. Issue a stay of all WCAB set forth herein, and
7 3. Allow parties to submit a list of lien claims subject hereto at the close of
8 discovery.

9
10 Dated: October 19, 2010

Respectfully submitted,

11 STATE COMPENSATION INSURANCE
12 FUND

13
14 By: 
Robert A. Wilson, Attorney

1 **PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5**

2 I declare that I am employed in the County of , State of California. I am over the
3 age of eighteen years and not a party to the within entitled cause. My business address is:
4 655 N. Central Ave., Glendale, CA 91203 . On October 21, 2010, I served the attached
5 **PETITION FOR CONSOLIDATION PURSUANT TO 8 CAL CODE OF REGS**
6 **10589 AND REQUEST FOR STAY OF PROCEEDINGS** on the interested parties in
7 said cause, by placing a true copy thereof, enclosed in an envelope addressed as follows:

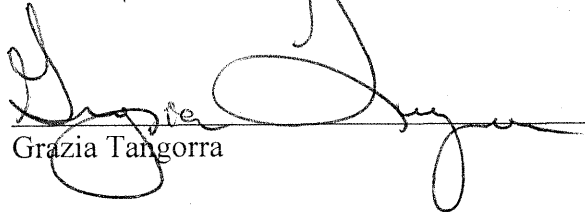
8
9 Division of Worker's Compensation
6150 Van Nuys Blvd., Room 105
10 Van Nuys, CA 91401

11 Division of Workers' Compensation
320 W. Fourth St. 9th Floor
12 Los Angeles, CA 90013

13 DNM Pharmacy
14 6221 Wilshire Blvd., #100
Los Angeles, CA 90048
15

16 I am readily familiar with the firm's practice of collection and processing
17 correspondence for mailing. Under that practice such envelope would be sealed and
18 deposited with U.S. postal service on that same day with postage thereon fully prepaid at ,
19 California in the ordinary course of business. I am aware that on motion of the party
20 served, service is presumed invalid if postal cancellation date or postage meter date is
21 more than one day after the date of deposit for mailing in this affidavit.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on October 21, 2010, at , California.

24
25 
26 Grazia Tangorra
27
28

STATE
COMPENSATION
INSURANCE
FUND

IN REPLY REFER TO:

October 20, 2010

Division of Workers' Compensation
320 W. Fourth St., 9th Floor
Los Angeles, CA 90013

Division of Workers' Compensation
6150 Van Nuys Blvd., Room 105
Van Nuys, CA 91401

Attn: WCJ Frank

WCJ Kahn

Re: Compound Pharmacy Consolidation

Your Honors:

Thank you for the opportunity to participate in the Compounding Pharmacy Consolidation at the Los Angeles DWC. (Luis Arellano v. Sherman Oaks Auto Resort) ADJ2131629 (Lead case).

State Fund is committed to the Global Resolution of all pharmacy liens as set forth in your motion which was previously set on October 5, 2010.

At this time State Fund will seek an expansion of the litigation to include all liens filed at all WCAB Boards which involve claims between the individual pharmacies and State Fund.

A copy of the following petitions for consolidation are included:

1. United Services Plus DBA Ronco Drug Pharmacy
2. The Prescription Center Pharmacy
3. RX Funding Solutions
4. Priority First Professional Services
5. Physicians Funding Solutions
6. PhyMed, Inc.
7. New Age Pharmaceuticals, Inc.
8. NCL Pharmaceuticals, Inc.
9. DNM Pharmacy
10. Life Pharmaceutical Management

These consolidations are limited to those pharmacies which have claims in excess of \$100k.

LEGAL DEPARTMENT
655 North Central Avenue • Glendale, CA 91203-1400
(818) 291-7100
Mailing Address: P.O. Box 92622 • Los Angeles, CA 90009-2622

Page: 2

Re: Compound Pharmacy Consolidation

State Fund has not included consolidations for California Pharmacy Management and Dr. Capen as they have been resolved per a Global Settlement Agreement for all Date of Service prior to 3/1/07. The balance of the liens are currently being negotiated.

In addition State Fund has not filed for consolidation for the following entities:

1. SD County Medical Association
2. Physicians RX Network
3. Panther Pharmaceutical Service
4. Ali Mumtaz A

State Fund believes that due to the smaller dollar amounts of these liens and with the assistance of the DWC, they may be resolved through expedited negotiation.

At this time, State Fund requests that a Status Conference be set with each of the entities set forth herein so that we might explain the information required to begin the negotiation process.

State Fund remains open to ADD any additional pharmacies at the request of the DWC.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Wilson". The signature is fluid and cursive, with the first name "Robert" being the most prominent.

Robert A. Wilson
Attorney

gt
encl.

1 Robert A. Wilson, (SBN 102943)
2 State Compensation Insurance Fund
3 655 North Central Avenue, Suite 400
4 Glendale, CA 91203-1400

5 Mailing Address: P.O. Box 92622
6 Los Angeles, CA 90009-2622

7 Telephone: 818-550-5340
8 Fax: 818-291-7356

9 Attorney for Defendant
10 State Compensation Insurance Fund

11 WORKERS' COMPENSATION APPEALS BOARD
12 STATE OF CALIFORNIA
13
14

15 MEZA DE RUBIO, MARGARITA
16 (05527158) MASTER FILE

17 Applicant,

18 NCL PHARMACEUTICALS, INC.

19 Lien Claimant,

20 v.

21 NEWPORT APPAREL CORPORATION; STATE
22 COMPENSATION INSURANCE FUND,

23 Defendants.
24
25
26
27
28

Case No. ADJ6754792

**PETITION FOR
CONSOLIDATION
PURSUANT TO 8 CAL
CODE OF REGS 10589
AND REQUEST FOR
STAY OF PROCEEDINGS**

State Compensation Insurance Fund (State Fund) submits this Petition for Consolidation pursuant to 8 Cal Code Regs 10589 and 10591 and request for stay of proceedings.

At this time State Fund limits the scope of the Petition for Consolidation for the limited purpose of conducting reasonable discovery and settlement negotiations.

2010 OCT 21 AM 11:35
LPT OF INDUSTRIAL RELATIONS
DWC/H/CAB

1 **State Fund reserves the right to Petition to expand the consolidation for purposes of**
2 **litigation if necessary.**

3 Due to inadequate funding and a depletion of qualified personnel, the Workers'
4 Compensation Appeals Board cannot adequately litigate the medical liens being filed
5 individually at the various Workers' Compensation Appeals Boards.

6 **On August 23, 2010 the Los Angeles District Office of the Workers'**
7 **Compensation Appeals Board filed a "Motion to Consolidate and Stay all Lien**
8 **Proceedings regarding Compound Pharmacy Liens" in the Master case of Luis**
9 **Arellano ADJ2131629.**

10 The Board identified 21 separate pharmacies along with numerous "alleged"
11 compounds which are common to these entities.

12 The entities are as follows:

13 Cal Pharmacy Management
14 DNM Pharmacy
15 Landmark Medical Management
16 Life Pharmaceutical Management
17 NCL Pharmacy
18 New Age Pharmaceuticals
19 Panther Pharmacy Management
20 Phymed Inc
21 Physician Funding
22 Physician Rx Network
23 Priority First Professional
24 Rx Funding
25 Sun Life Funding
26 The Prescription Center Pharmacy
27 United Services Plus

28 The liens of Cal Pharmacy Management and Dr. Capen have resolved through
an existing Global Settlement Agreement.

The compounds are as follows:

Amitriptyline DT
Capsaicin
Dendracin
Diclofenac

1 Gabapentin
2 Ketoprofen
3 Dextromethorphan
4 Cycloprofen
5 Cyclobenzaprine
6 Fluribiprofen
7 GKL Transdermal
8 Lidoderm/Lidocaine
9 Orpheadrine
10 Sertaline
11 Transdermal compound

12 The motion filed by the Los Angeles WCAB is limited to only those lien claims
13 which have been filed at the Los Angeles Board.

14 State Compensation Insurance Fund welcomes the opportunity to assist in the
15 resolution of the medical lien road black at the Los Angeles WCAB, however we believe
16 that the most efficient utilization of resources require expansion of the scope of the
17 consolidation to include all medical lien issues between State Compensation Insurance
18 Fund and each of the individual entities identified by the Board in their motion to
19 consolidate. The consolidation should not be limited to the Los Angeles District office.

20 At this time, State Fund is unable to determine the exact scope of the potential
21 liability of these liens in that State Fund systems do not segregate procedures through
22 identification of individual compounds.

23 Extensive discovery is needed on a global basis to assess the risk of litigation and
24 to obtain adequate settlement authority.

25 State Fund needs to identify the proper parties pursuant to Labor Code § 10550
26 before negotiations can be evaluated.

27 Discovery would be extended to include the following common issues of law and
28 fact.

1. Has the pharmacy been properly licensed by the California Pharmacy Board to
institute compound medications in the State of California, Business

1 Professions Code 4000, et seq., Board of Pharmacy Regs Title 16 Sec 1700 et
2 seq.

3 2. Does a contract rate exist between State Fund and the pharmacy through
4 Express Scripts relationship.

5 3. Do the medications identified by the WCAB in its motion to consolidate
6 constitute "compound" drugs which are exempt from Federal Food and Drug
7 Administration (FDA) regulations.

8 Common issues exist to determine whether the compounds are unique as to
9 each patient or are they substantially commercially available compounds.

10 4. Has the medical doctor adequately explained the necessities of a "compound"
11 through the prescription and medical reports.

12 5. Who actually performs the compounding function.

13 6. What is the source and cost of the components involved in the compounding.

14 7. Was authorization for compound medication requested pursuant to through
15 Utilization Review pursuant to CCR § 9792.6(o).

16 8. What is the reasonable value of the compounded medications.

17 9. Does the lien claimants itemization provide adequate information to
18 determine reasonableness setting forth the following factors::

19 a. National Drug Control (NDC)

20 b. Quantity

21 c. List of items charged

22 d. Name of each active ingredient

23 e. Name of each inert ingredient

24 f. The proportion of each ingredient in the compounded medication

25 10. With respect to application of CCR § 9789.40 is the date of service prior to or
26 subsequent to March 1, 2007.

1 11. Has the provider complied with reg. CCR 1716.1 in regards to 72 hours
2 samples and whether a proper follow up prescription has been supplied.

3 12. Does lien claimant assert any other claims for reimbursement other than
4 compound medications.

5 Each of the entities referred to herein, have filed medical treatment liens to pursue
6 additional payment for the payment of the compound medications.

7 It is anticipated that the medical liens will involve several thousand claims, each
8 of which would involve a separate hearing at the Workers' Compensation Appeals Board.

9 Consolidation allows the Workers' Compensation Appeals Board to avoid
10 multiple trials on the same issue and with the same parties, and to provide a more
11 consistent outcome.

12 Given the potential that some of these entities may have filed liens venue in
13 Boards other than the Los Angeles WCAB, State Fund specifically requests that this
14 consolidation be venue at the Van Nuys WCAB under the supervision of Chief Workers'
15 Compensation Judge Mark L. Kahn.

16 State Fund respectfully requests that a stay of all proceedings relating to all named
17 entities against State Compensation Insurance Fund be granted. The request for stay
18 includes, but is not limited to, suspension of actions to bring liens to Conference and/or
19 Trial as well as cancellation of trials on lien-related issues that are already scheduled.

20 State Fund agrees that a list of claims will be provided to the WCAB when
21 discovery regarding identification of all claims is completed.

22 Nothing in this Petition shall neither be construed as a waiver by State Fund of
23 any defenses against lien claimants. State Fund does not waive the right to seek credit
24 and/or reimbursement or any other rights to which State Fund may be entitled against lien
25 claimant.

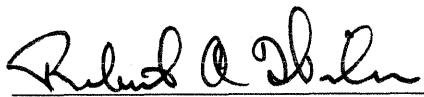
1 **WHEREFORE**, State Compensation Insurance Fund respectfully requests that in
2 the interest of judicial economy, evidence duplication of discovery and trial associated
3 preparation costs and for all other reasons indicated above, this Court:

- 4 1. Consolidate for purposes of Discovery and settlement all lien claims of the
5 above described entity against State Compensation Insurance Fund.
6 2. Issue a stay of all WCAB set forth herein, and
7 3. Allow parties to submit a list of lien claims subject hereto at the close of
8 discovery.

9
10 Dated: October 19, 2010

Respectfully submitted,

11 STATE COMPENSATION INSURANCE
12 FUND

13 By: 
14 Robert A. Wilson, Attorney

1 **PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5**

2 I declare that I am employed in the County of , State of California. I am over the
3 age of eighteen years and not a party to the within entitled cause. My business address is:
4 655 N. Central Ave., Glendale, CA 91203 . On October 21 , 2010, I served the attached
5 **PETITION FOR CONSOLIDATION PURSUANT TO 8 CAL CODE OF REGS**
6 **10589 AND REQUEST FOR STAY OF PROCEEDINGS** on the interested parties in
7 said cause, by placing a true copy thereof, enclosed in an envelope addressed as follows:

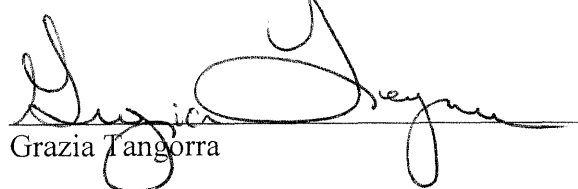
8
9 Division of Worker's Compensation
6150 Van Nuys Blvd., Room 105
10 Van Nuys, CA 91401

11 Division of Workers' Compensation
320 W. Fourth St. 9th Floor
12 Los Angeles, CA 90013

13 NCL Pharmaceuticals, Inc.
14 P.O. Box 250337
Glendale, CA 91225
15

16 I am readily familiar with the firm's practice of collection and processing
17 correspondence for mailing. Under that practice such envelope would be sealed and
18 deposited with U.S. postal service on that same day with postage thereon fully prepaid at ,
19 California in the ordinary course of business. I am aware that on motion of the party
20 served, service is presumed invalid if postal cancellation date or postage meter date is
21 more than one day after the date of deposit for mailing in this affidavit.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on October 21, 2010, at , California.

24
25 
26 Grazia Tangorra
27
28

STATE
COMPENSATION
INSURANCE
FUND

IN REPLY REFER TO:

October 20, 2010

Division of Workers' Compensation
320 W. Fourth St., 9th Floor
Los Angeles, CA 90013

Division of Workers' Compensation
6150 Van Nuys Blvd., Room 105
Van Nuys, CA 91401

Attn: WCJ Frank

WCJ Kahn

Re: Compound Pharmacy Consolidation

Your Honors:

Thank you for the opportunity to participate in the Compounding Pharmacy Consolidation at the Los Angeles DWC. (Luis Arellano v. Sherman Oaks Auto Resort) ADJ2131629 (Lead case).

State Fund is committed to the Global Resolution of all pharmacy liens as set forth in your motion which was previously set on October 5, 2010.

At this time State Fund will seek an expansion of the litigation to include all liens filed at all WCAB Boards which involve claims between the individual pharmacies and State Fund.

A copy of the following petitions for consolidation are included:

1. United Services Plus DBA Ronco Drug Pharmacy
2. The Prescription Center Pharmacy
3. RX Funding Solutions
4. Priority First Professional Services
5. Physicians Funding Solutions
6. PhyMed, Inc.
7. New Age Pharmaceuticals, Inc.
8. NCL Pharmaceuticals, Inc.
9. DNM Pharmacy
10. Life Pharmaceutical Management

These consolidations are limited to those pharmacies which have claims in excess of \$100k.

LEGAL DEPARTMENT
655 North Central Avenue • Glendale, CA 91203-1400
(818) 291-7100
Mailing Address: P.O. Box 92622 • Los Angeles, CA 90009-2622

Page: 2

Re: Compound Pharmacy Consolidation

State Fund has not included consolidations for California Pharmacy Management and Dr. Capen as they have been resolved per a Global Settlement Agreement for all Date of Service prior to 3/1/07. The balance of the liens are currently being negotiated.

In addition State Fund has not filed for consolidation for the following entities:

1. SD County Medical Association
2. Physicians RX Network
3. Panther Pharmaceutical Service
4. Ali Mumtaz A

State Fund believes that due to the smaller dollar amounts of these liens and with the assistance of the DWC, they may be resolved through expedited negotiation.

At this time, State Fund requests that a Status Conference be set with each of the entities set forth herein so that we might explain the information required to begin the negotiation process.

State Fund remains open to ADD any additional pharmacies at the request of the DWC.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Wilson". The signature is fluid and cursive, with the first name "Robert" being the most prominent.

Robert A. Wilson
Attorney

gt
encl.

1 Robert A. Wilson, (SBN 102943)
2 State Compensation Insurance Fund
3 655 North Central Avenue, Suite 400
4 Glendale, CA 91203-1400

5 Mailing Address: P.O. Box 92622
6 Los Angeles, CA 90009-2622

7 Telephone: 818-550-5340
8 Fax: 818-291-7356

9 Attorney for Defendant
10 State Compensation Insurance Fund

11 WORKERS' COMPENSATION APPEALS BOARD

12 STATE OF CALIFORNIA

13 LOVE, RICKY (05240730) MASTER FILE

14 Applicant,

15 NEW AGE PHARMACEUTICALS, INC.

16 Lien Claimant,

17 v.

18 LOS ANGELES CONSERVATION
19 CORPORATION; STATE COMPENSATION
20 INSURANCE FUND,

21 Defendants.

Case No. ADJ2581304

**PETITION FOR
CONSOLIDATION
PURSUANT TO 8 CAL
CODE OF REGS 10589
AND REQUEST FOR
STAY OF PROCEEDINGS**

22 State Compensation Insurance Fund (State Fund) submits this Petition for
23 Consolidation pursuant to 8 Cal Code Regs 10589 and 10591 and request for stay of
24 proceedings.

25 **At this time State Fund limits the scope of the Petition for Consolidation for**
26 **the limited purpose of conducting reasonable discovery and settlement negotiations.**
27
28

1 **State Fund reserves the right to Petition to expand the consolidation for purposes of**
2 **litigation if necessary.**

3 Due to inadequate funding and a depletion of qualified personnel, the Workers'
4 Compensation Appeals Board cannot adequately litigate the medical liens being filed
5 individually at the various Workers' Compensation Appeals Boards.

6 **On August 23, 2010 the Los Angeles District Office of the Workers'**
7 **Compensation Appeals Board filed a "Motion to Consolidate and Stay all Lien**
8 **Proceedings regarding Compound Pharmacy Liens" in the Master case of Luis**
9 **Arellano ADJ2131629.**

10 The Board identified 21 separate pharmacies along with numerous "alleged"
11 compounds which are common to these entities.

12 The entities are as follows:

13 Cal Pharmacy Management
14 DNM Pharmacy
15 Landmark Medical Management
16 Life Pharmaceutical Management
17 NCL Pharmacy
18 New Age Pharmaceuticals
19 Panther Pharmacy Management
20 Phymed Inc
21 Physician Funding
22 Physician Rx Network
23 Priority First Professional
24 Rx Funding
25 Sun Life Funding
26 The Prescription Center Pharmacy
27 United Services Plus

28 The liens of Cal Pharmacy Management and Dr. Capen have resolved through
an existing Global Settlement Agreement.

The compounds are as follows:

Amitriptyline DT
Capsaicin
Dendracin
Diclofenac

1 Gabapentin
2 Ketoptofen
3 Dextromethorphan
4 Cycloprofen
5 Cyclobenzaprine
6 Fluribipufen
7 GKL Transdernal
8 Lidoderm/Lidocaine
9 Orpheadrine
10 Sertaline
11 Transdermal compound

12 The motion filed by the Los Angeles WCAB is limited to only those lien claims
13 which have been filed at the Los Angeles Board.

14 State Compensation Insurance Fund welcomes the opportunity to assist in the
15 resolution of the medical lien road black at the Los Angeles WCAB, however we believe
16 that the most efficient utilization of resources require expansion of the scope of the
17 consolidation to include all medical lien issues between State Compensation Insurance
18 Fund and each of the individual entities identified by the Board in their motion to
19 consolidate. The consolidation should not be limited to the Los Angeles District office.

20 At this time, State Fund is unable to determine the exact scope of the potential
21 liability of these liens in that State Fund systems do not segregate procedures through
22 identification of individual compounds.

23 Extensive discovery is needed on a global basis to assess the risk of litigation and
24 to obtain adequate settlement authority.

25 State Fund needs to identify the proper parties pursuant to Labor Code § 10550
26 before negotiations can be evaluated.

27 Discovery would be extended to include the following common issues of law and
28 fact.

1. Has the pharmacy been properly licensed by the California Pharmacy Board to
institute compound medications in the State of California, Business

1 Professions Code 4000, et seq., Board of Pharmacy Regs Title 16 Sec 1700 et
2 seq.

3 2. Does a contract rate exist between State Fund and the pharmacy through
4 Express Scripts relationship.

5 3. Do the medications identified by the WCAB in its motion to consolidate
6 constitute "compound" drugs which are exempt from Federal Food and Drug
7 Administration (FDA) regulations.

8 Common issues exist to determine whether the compounds are unique as to
9 each patient or are they substantially commercially available compounds.

10 4. Has the medical doctor adequately explained the necessities of a "compound"
11 through the prescription and medical reports.

12 5. Who actually performs the compounding function.

13 6. What is the source and cost of the components involved in the compounding.

14 7. Was authorization for compound medication requested pursuant to through
15 Utilization Review pursuant to CCR § 9792.6(o).

16 8. What is the reasonable value of the compounded medications.

17 9. Does the lien claimants itemization provide adequate information to
18 determine reasonableness setting forth the following factors::

19 a. National Drug Control (NDC)

20 b. Quantity

21 c. List of items charged

22 d. Name of each active ingredient

23 e. Name of each inert ingredient

24 f. The proportion of each ingredient in the compounded medication

25 10. With respect to application of CCR § 9789.40 is the date of service prior to or
26 subsequent to March 1, 2007.

1 11. Has the provider complied with reg. CCR 1716.1 in regards to 72 hours
2 samples and whether a proper follow up prescription has been supplied.

3 12. Does lien claimant assert any other claims for reimbursement other than
4 compound medications.

5 Each of the entities referred to herein, have filed medical treatment liens to pursue
6 additional payment for the payment of the compound medications.

7 It is anticipated that the medical liens will involve several thousand claims, each
8 of which would involve a separate hearing at the Workers' Compensation Appeals Board.

9 Consolidation allows the Workers' Compensation Appeals Board to avoid
10 multiple trials on the same issue and with the same parties, and to provide a more
11 consistent outcome.

12 Given the potential that some of these entities may have filed liens venue in
13 Boards other than the Los Angeles WCAB, State Fund specifically requests that this
14 consolidation be venue at the Van Nuys WCAB under the supervision of Chief Workers'
15 Compensation Judge Mark L. Kahn.

16 State Fund respectfully requests that a stay of all proceedings relating to all named
17 entities against State Compensation Insurance Fund be granted. The request for stay
18 includes, but is not limited to, suspension of actions to bring liens to Conference and/or
19 Trial as well as cancellation of trials on lien-related issues that are already scheduled.

20 State Fund agrees that a list of claims will be provided to the WCAB when
21 discovery regarding identification of all claims is completed.

22 Nothing in this Petition shall neither be construed as a waiver by State Fund of
23 any defenses against lien claimants. State Fund does not waive the right to seek credit
24 and/or reimbursement or any other rights to which State Fund may be entitled against lien
25 claimant.

1 **WHEREFORE**, State Compensation Insurance Fund respectfully requests that in
2 the interest of judicial economy, evidence duplication of discovery and trial associated
3 preparation costs and for all other reasons indicated above, this Court:

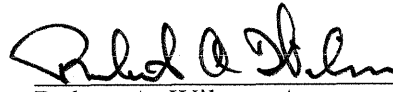
- 4 1. Consolidate for purposes of Discovery and settlement all lien claims of the
5 above described entity against State Compensation Insurance Fund.
6 2. Issue a stay of all WCAB set forth herein, and
7 3. Allow parties to submit a list of lien claims subject hereto at the close of
8 discovery.

9
10 Dated: October 19, 2010

Respectfully submitted,

11 STATE COMPENSATION INSURANCE
12 FUND

13
14 By:


Robert A. Wilson, Attorney

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7

8
9
10

11
12

13
14
15

16
17
18
19
20
21

22

23

24

25
26
27
28

STATE
COMPENSATION
INSURANCE
FUND

IN REPLY REFER TO:

October 20, 2010

Division of Workers' Compensation
320 W. Fourth St., 9th Floor
Los Angeles, CA 90013

Division of Workers' Compensation
6150 Van Nuys Blvd., Room 105
Van Nuys, CA 91401

Attn: WCJ Frank

WCJ Kahn

Re: Compound Pharmacy Consolidation

Your Honors:

Thank you for the opportunity to participate in the Compounding Pharmacy Consolidation at the Los Angeles DWC. (Luis Arellano v. Sherman Oaks Auto Resort) ADJ2131629 (Lead case).

State Fund is committed to the Global Resolution of all pharmacy liens as set forth in your motion which was previously set on October 5, 2010.

At this time State Fund will seek an expansion of the litigation to include all liens filed at all WCAB Boards which involve claims between the individual pharmacies and State Fund.

A copy of the following petitions for consolidation are included:

1. United Services Plus DBA Ronco Drug Pharmacy
2. The Prescription Center Pharmacy
3. RX Funding Solutions
4. Priority First Professional Services
5. Physicians Funding Solutions
6. PhyMed, Inc.
7. New Age Pharmaceuticals, Inc.
8. NCL Pharmaceuticals, Inc.
9. DNM Pharmacy
10. Life Pharmaceutical Management

These consolidations are limited to those pharmacies which have claims in excess of \$100k.

LEGAL DEPARTMENT
655 North Central Avenue • Glendale, CA 91203-1400
(818) 291-7100
Mailing Address: P.O. Box 92622 • Los Angeles, CA 90009-2622

Page: 2

Re: Compound Pharmacy Consolidation

State Fund has not included consolidations for California Pharmacy Management and Dr. Capen as they have been resolved per a Global Settlement Agreement for all Date of Service prior to 3/1/07. The balance of the liens are currently being negotiated.

In addition State Fund has not filed for consolidation for the following entities:

1. SD County Medical Association
2. Physicians RX Network
3. Panther Pharmaceutical Service
4. Ali Mumtaz A

State Fund believes that due to the smaller dollar amounts of these liens and with the assistance of the DWC, they may be resolved through expedited negotiation.

At this time, State Fund requests that a Status Conference be set with each of the entities set forth herein so that we might explain the information required to begin the negotiation process.

State Fund remains open to ADD any additional pharmacies at the request of the DWC.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Wilson". The signature is fluid and cursive, with the first name "Robert" being the most prominent.

Robert A. Wilson
Attorney

gt
encl.

Robert A. Wilson, (SBN 102943)
State Compensation Insurance Fund
655 North Central Avenue, Suite 400
Glendale, CA 91203-1400

Mailing Address: P.O. Box 92622
Los Angeles, CA 90009-2622

Telephone: 818-550-5340
Fax: 818-291-7356

Attorney for Defendant
State Compensation Insurance Fund

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

PALLARES, MAURICIO (04997538) MASTER FILE

Case No. ADJ2393375

Applicant,

PHYMED, INC.

Lien Claimant,

v.

EPIK INCORPORATED; STATE
COMPENSATION INSURANCE FUND,

Defendants.

**PETITION FOR
CONSOLIDATION
PURSUANT TO 8 CAL
CODE OF REGS 10589
AND REQUEST FOR
STAY OF PROCEEDINGS**

State Compensation Insurance Fund (State Fund) submits this Petition for Consolidation pursuant to 8 Cal Code Regs 10589 and 10591 and request for stay of proceedings.

At this time State Fund limits the scope of the Petition for Consolidation for the limited purpose of conducting reasonable discovery and settlement negotiations. State Fund reserves the right to Petition to expand the consolidation for purposes of litigation if necessary.

1 Due to inadequate funding and a depletion of qualified personnel, the Workers'
2 Compensation Appeals Board cannot adequately litigate the medical liens being filed
3 individually at the various Workers' Compensation Appeals Boards.

4 **On August 23, 2010 the Los Angeles District Office of the Workers'**
5 **Compensation Appeals Board filed a "Motion to Consolidate and Stay all Lien**
6 **Proceedings regarding Compound Pharmacy Liens" in the Master case of Luis**
7 **Arellano ADJ2131629.**

8 The Board identified 21 separate pharmacies along with numerous "alleged"
9 compounds which are common to these entities.

10 The entities are as follows:

11 Cal Pharmacy Management
12 DNM Pharmacy
13 Landmark Medical Management
14 Life Pharmaceutical Management
15 NCL Pharmacy
16 New Age Pharmaceuticals
17 Panther Pharmacy Management
18 Phymed Inc
19 Physician Funding
20 Physician Rx Network
21 Priority First Professional
22 Rx Funding
23 Sun Life Funding
24 The Prescription Center Pharmacy
25 United Services Plus

26 The liens of Cal Pharmacy Management and Dr. Capen have resolved through
27 an existing Global Settlement Agreement.

28 The compounds are as follows:

Amitriptyline DT
Capsaicin
Dendracin
Diclofenac
Gabapentin
Ketoptofen
Dextromethorphan

1 Cycloprofen
2 Cyclobenzaprine
3 Fluribiprofen
4 GKL Transdernal
5 Lidoderm/Lidocaine
6 Orpheadrine
7 Sertaline
8 Transdermal compound

9 The motion filed by the Los Angeles WCAB is limited to only those lien claims
10 which have been filed at the Los Angeles Board.

11 State Compensation Insurance Fund welcomes the opportunity to assist in the
12 resolution of the medical lien road black at the Los Angeles WCAB, however we believe
13 that the most efficient utilization of resources require expansion of the scope of the
14 consolidation to include all medical lien issues between State Compensation Insurance
15 Fund and each of the individual entities identified by the Board in their motion to
16 consolidate. The consolidation should not be limited to the Los Angeles District office.

17 At this time, State Fund is unable to determine the exact scope of the potential
18 liability of these liens in that State Fund systems do not segregate procedures through
19 identification of individual compounds.

20 Extensive discovery is needed on a global basis to assess the risk of litigation and
21 to obtain adequate settlement authority.

22 State Fund needs to identify the proper parties pursuant to Labor Code § 10550
23 before negotiations can be evaluated.

24 Discovery would be extended to include the following common issues of law and
25 fact.

- 26 1. Has the pharmacy been properly licensed by the California Pharmacy Board to
27 institute compound medications in the State of California, Business
28 Professions Code 4000, et seq., Board of Pharmacy Regs Title 16 Sec 1700 et
seq.

2. Does a contract rate exist between State Fund and the pharmacy through Express Scripts relationship.
3. Do the medications identified by the WCAB in its motion to consolidate constitute "compound" drugs which are exempt from Federal Food and Drug Administration (FDA) regulations.

Common issues exist to determine whether the compounds are unique as to each patient or are they substantially commercially available compounds.
4. Has the medical doctor adequately explained the necessities of a "compound" through the prescription and medical reports.
5. Who actually performs the compounding function.
6. What is the source and cost of the components involved in the compounding.
7. Was authorization for compound medication requested pursuant to through Utilization Review pursuant to CCR § 9792.6(o).
8. What is the reasonable value of the compounded medications.
9. Does the lien claimants itemization provide adequate information to determine reasonableness setting forth the following factors::
 - a. National Drug Control (NDC)
 - b. Quantity
 - c. List of items charged
 - d. Name of each active ingredient
 - e. Name of each inert ingredient
 - f. The proportion of each ingredient in the compounded medication
10. With respect to application of CCR § 9789.40 is the date of service prior to or subsequent to March 1, 2007.
11. Has the provider complied with reg. CCR 1716.1 in regards to 72 hours samples and whether a proper follow up prescription has been supplied.

12. Does lien claimant assert any other claims for reimbursement other than compound medications.

Each of the entities referred to herein, have filed medical treatment liens to pursue additional payment for the payment of the compound medications.

It is anticipated that the medical liens will involve several thousand claims, each of which would involve a separate hearing at the Workers' Compensation Appeals Board.

Consolidation allows the Workers' Compensation Appeals Board to avoid multiple trials on the same issue and with the same parties, and to provide a more consistent outcome.

Given the potential that some of these entities may have filed liens venue in Boards other than the Los Angeles WCAB, State Fund specifically requests that this consolidation be venue at the Van Nuys WCAB under the supervision of Chief Workers' Compensation Judge Mark L. Kahn.

State Fund respectfully requests that a stay of all proceedings relating to all named entities against State Compensation Insurance Fund be granted. The request for stay includes, but is not limited to, suspension of actions to bring liens to Conference and/or Trial as well as cancellation of trials on lien-related issues that are already scheduled.

State Fund agrees that a list of claims will be provided to the WCAB when discovery regarding identification of all claims is completed.

Nothing in this Petition shall neither be construed as a waiver by State Fund of any defenses against lien claimants. State Fund does not waive the right to seek credit and/or reimbursement or any other rights to which State Fund may be entitled against lien claimant.

WHEREFORE, State Compensation Insurance Fund respectfully requests that in the interest of judicial economy, evidence duplication of discovery and trial associated preparation costs and for all other reasons indicated above, this Court:

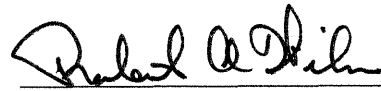
1. Consolidate for purposes of Discovery and settlement all lien claims of the above described entity against State Compensation Insurance Fund.
2. Issue a stay of all WCAB set forth herein, and
3. Allow parties to submit a list of lien claims subject hereto at the close of discovery.

Dated: October 19, 2010

Respectfully submitted,

STATE COMPENSATION INSURANCE
FUND

By:



Robert A. Wilson, Attorney

1 **PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5**

2 I declare that I am employed in the County of , State of California. I am over the
3 age of eighteen years and not a party to the within entitled cause. My business address is:
4 655 N. Central Ave., Glendale, CA 91203 . On October 21, 2010, I served the attached
5 **PETITION FOR CONSOLIDATION PURSUANT TO 8 CAL CODE OF REGS**
6 **10589 AND REQUEST FOR STAY OF PROCEEDINGS** on the interested parties in
7 said cause, by placing a true copy thereof, enclosed in an envelope addressed as follows:

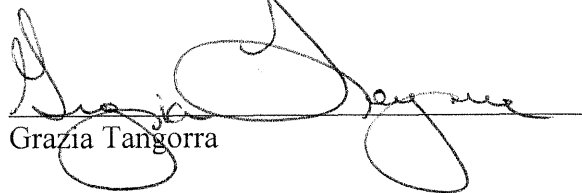
8
9 Division of Worker's Compensation
6150 Van Nuys Blvd., Room 105
10 Van Nuys, CA 91401

11 Division of Workers' Compensation
320 W. Fourth St. 9th Floor
12 Los Angeles, CA 90013

13 PhyMed, Inc.
14 28720 Roadside Dr., Suite 275
Agoura Hills, CA 91301-6067
15

16 I am readily familiar with the firm's practice of collection and processing
17 correspondence for mailing. Under that practice such envelope would be sealed and
18 deposited with U.S. postal service on that same day with postage thereon fully prepaid at ,
19 California in the ordinary course of business. I am aware that on motion of the party
20 served, service is presumed invalid if postal cancellation date or postage meter date is
21 more than one day after the date of deposit for mailing in this affidavit.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on October 21, 2010, at California.

24
25 
26 Grazia Tangorra
27
28

STATE
COMPENSATION
INSURANCE
FUND

IN REPLY REFER TO:

October 20, 2010

Division of Workers' Compensation
320 W. Fourth St., 9th Floor
Los Angeles, CA 90013

Division of Workers' Compensation
6150 Van Nuys Blvd., Room 105
Van Nuys, CA 91401

Attn: WCJ Frank

WCJ Kahn

Re: Compound Pharmacy Consolidation

Your Honors:

Thank you for the opportunity to participate in the Compounding Pharmacy Consolidation at the Los Angeles DWC. (Luis Arellano v. Sherman Oaks Auto Resort) ADJ2131629 (Lead case).

State Fund is committed to the Global Resolution of all pharmacy liens as set forth in your motion which was previously set on October 5, 2010.

At this time State Fund will seek an expansion of the litigation to include all liens filed at all WCAB Boards which involve claims between the individual pharmacies and State Fund.

A copy of the following petitions for consolidation are included:

1. United Services Plus DBA Ronco Drug Pharmacy
2. The Prescription Center Pharmacy
3. RX Funding Solutions
4. Priority First Professional Services
5. Physicians Funding Solutions
6. PhyMed, Inc.
7. New Age Pharmaceuticals, Inc.
8. NCL Pharmaceuticals, Inc.
9. DNM Pharmacy
10. Life Pharmaceutical Management

These consolidations are limited to those pharmacies which have claims in excess of \$100k.

LEGAL DEPARTMENT
655 North Central Avenue • Glendale, CA 91203-1400
(818) 291-7100
Mailing Address: P.O. Box 92622 • Los Angeles, CA 90009-2622

Page: 2

Re: Compound Pharmacy Consolidation

State Fund has not included consolidations for California Pharmacy Management and Dr. Capen as they have been resolved per a Global Settlement Agreement for all Date of Service prior to 3/1/07. The balance of the liens are currently being negotiated.

In addition State Fund has not filed for consolidation for the following entities:

1. SD County Medical Association
2. Physicians RX Network
3. Panther Pharmaceutical Service
4. Ali Mumtaz A

State Fund believes that due to the smaller dollar amounts of these liens and with the assistance of the DWC, they may be resolved through expedited negotiation.

At this time, State Fund requests that a Status Conference be set with each of the entities set forth herein so that we might explain the information required to begin the negotiation process.

State Fund remains open to ADD any additional pharmacies at the request of the DWC.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Wilson". The signature is fluid and cursive, with the first name "Robert" being the most prominent.

Robert A. Wilson
Attorney

gt
encl.

1 Robert A. Wilson, (SBN 102943)
2 State Compensation Insurance Fund
3 655 North Central Avenue, Suite 400
4 Glendale, CA 91203-1400

5 Mailing Address: P.O. Box 92622
6 Los Angeles, CA 90009-2622

7 Telephone: 818-550-5340
8 Fax: 818-291-7356

9 Attorney for Defendant
10 State Compensation Insurance Fund

11 WORKERS' COMPENSATION APPEALS BOARD
12 STATE OF CALIFORNIA

13 MORALES, MARIA (05211400) MASTER FILE

Case No. ADJ2825602

14 Applicant,

15 PRIORITY FIRST PROFESSIONAL SERVICES

16 Lien Claimant,

17 v.

18 PHILMORROW AMERICA, INC.; STATE
19 COMPENSATION INSURANCE FUND,

20 Defendants.

**PETITION FOR
CONSOLIDATION
PURSUANT TO 8 CAL
CODE OF REGS 10589
AND REQUEST FOR
STAY OF PROCEEDINGS**

21 State Compensation Insurance Fund (State Fund) submits this Petition for
22 Consolidation pursuant to 8 Cal Code Regs 10589 and 10591 and request for stay of
23 proceedings.

24 **At this time State Fund limits the scope of the Petition for Consolidation for**
25 **the limited purpose of conducting reasonable discovery and settlement negotiations.**
26 **State Fund reserves the right to Petition to expand the consolidation for purposes of**
27 **litigation if necessary.**
28

010 OCT 21 AM 11:34
LPT OF INDUST RELATIONS
DWC/WCAB

RECEIVED
FIVE

1 Due to inadequate funding and a depletion of qualified personnel, the Workers'
2 Compensation Appeals Board cannot adequately litigate the medical liens being filed
3 individually at the various Workers' Compensation Appeals Boards.

4 **On August 23, 2010 the Los Angeles District Office of the Workers'**
5 **Compensation Appeals Board filed a "Motion to Consolidate and Stay all Lien**
6 **Proceedings regarding Compound Pharmacy Liens" in the Master case of Luis**
7 **Arellano ADJ2131629.**

8 The Board identified 21 separate pharmacies along with numerous "alleged"
9 compounds which are common to these entities.

10 The entities are as follows:

11 Cal Pharmacy Management
12 DNM Pharmacy
13 Landmark Medical Management
14 Life Pharmaceutical Management
15 NCL Pharmacy
16 New Age Pharmaceuticals
17 Panther Pharmacy Management
18 Phymed Inc
19 Physician Funding
20 Physician Rx Network
21 Priority First Professional
22 Rx Funding
23 Sun Life Funding
24 The Prescription Center Pharmacy
25 United Services Plus

26 The liens of Cal Pharmacy Management and Dr. Capen have resolved through
27 an existing Global Settlement Agreement.

28 The compounds are as follows:

Amitriptyline DT
Capsaicin
Dendracin
Diclofenac
Gabapentin
Ketoptofen
Dextromethorphan

1 Cycloprofen
2 Cyclobenzaprine
3 Fluribiprofen
4 GKL Transdermal
5 Lidoderm/Lidocaine
6 Orpheadrine
7 Sertaline
8 Transdermal compound

9 The motion filed by the Los Angeles WCAB is limited to only those lien claims
10 which have been filed at the Los Angeles Board.

11 State Compensation Insurance Fund welcomes the opportunity to assist in the
12 resolution of the medical lien road black at the Los Angeles WCAB, however we believe
13 that the most efficient utilization of resources require expansion of the scope of the
14 consolidation to include all medical lien issues between State Compensation Insurance
15 Fund and each of the individual entities identified by the Board in their motion to
16 consolidate. The consolidation should not be limited to the Los Angeles District office.

17 At this time, State Fund is unable to determine the exact scope of the potential
18 liability of these liens in that State Fund systems do not segregate procedures through
19 identification of individual compounds.

20 Extensive discovery is needed on a global basis to assess the risk of litigation and
21 to obtain adequate settlement authority.

22 State Fund needs to identify the proper parties pursuant to Labor Code § 10550
23 before negotiations can be evaluated.

24 Discovery would be extended to include the following common issues of law and
25 fact.

- 26 1. Has the pharmacy been properly licensed by the California Pharmacy Board to
27 institute compound medications in the State of California, Business
28 Professions Code 4000, et seq., Board of Pharmacy Regs Title 16 Sec 1700 et
seq.

2. Does a contract rate exist between State Fund and the pharmacy through Express Scripts relationship.
3. Do the medications identified by the WCAB in its motion to consolidate constitute “compound” drugs which are exempt from Federal Food and Drug Administration (FDA) regulations.

Common issues exist to determine whether the compounds are unique as to each patient or are they substantially commercially available compounds.
4. Has the medical doctor adequately explained the necessities of a “compound” through the prescription and medical reports.
5. Who actually performs the compounding function.
6. What is the source and cost of the components involved in the compounding.
7. Was authorization for compound medication requested pursuant to through Utilization Review pursuant to CCR § 9792.6(o).
8. What is the reasonable value of the compounded medications.
9. Does the lien claimants itemization provide adequate information to determine reasonableness setting forth the following factors::
 - a. National Drug Control (NDC)
 - b. Quantity
 - c. List of items charged
 - d. Name of each active ingredient
 - e. Name of each inert ingredient
 - f. The proportion of each ingredient in the compounded medication
10. With respect to application of CCR § 9789.40 is the date of service prior to or subsequent to March 1, 2007.
11. Has the provider complied with reg. CCR 1716.1 in regards to 72 hours samples and whether a proper follow up prescription has been supplied.

1 12. Does lien claimant assert any other claims for reimbursement other than
2 compound medications.

3 Each of the entities referred to herein, have filed medical treatment liens to pursue
4 additional payment for the payment of the compound medications.

5 It is anticipated that the medical liens will involve several thousand claims, each
6 of which would involve a separate hearing at the Workers' Compensation Appeals Board.

7 Consolidation allows the Workers' Compensation Appeals Board to avoid
8 multiple trials on the same issue and with the same parties, and to provide a more
9 consistent outcome.

10 Given the potential that some of these entities may have filed liens venue in
11 Boards other than the Los Angeles WCAB, State Fund specifically requests that this
12 consolidation be venue at the Van Nuys WCAB under the supervision of Chief Workers'
13 Compensation Judge Mark L. Kahn.

14 State Fund respectfully requests that a stay of all proceedings relating to all named
15 entities against State Compensation Insurance Fund be granted. The request for stay
16 includes, but is not limited to, suspension of actions to bring liens to Conference and/or
17 Trial as well as cancellation of trials on lien-related issues that are already scheduled.

18 State Fund agrees that a list of claims will be provided to the WCAB when
19 discovery regarding identification of all claims is completed.

20 Nothing in this Petition shall neither be construed as a waiver by State Fund of
21 any defenses against lien claimants. State Fund does not waive the right to seek credit
22 and/or reimbursement or any other rights to which State Fund may be entitled against lien
23 claimant.

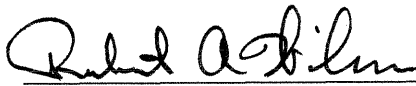
24 **WHEREFORE**, State Compensation Insurance Fund respectfully requests that in
25 the interest of judicial economy, evidence duplication of discovery and trial associated
26 preparation costs and for all other reasons indicated above, this Court:

1. Consolidate for purposes of Discovery and settlement all lien claims of the above described entity against State Compensation Insurance Fund.
2. Issue a stay of all WCAB set forth herein, and
3. Allow parties to submit a list of lien claims subject hereto at the close of discovery.

Dated: October 19, 2010

Respectfully submitted,

STATE COMPENSATION INSURANCE
FUND

By: 
Robert A. Wilson, Attorney

1 **PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5**

2 I declare that I am employed in the County of , State of California. I am over the
3 age of eighteen years and not a party to the within entitled cause. My business address is:
4 655 N. Central Ave., Glendale, CA 91203 . On October 21, 2010, I served the attached
5 **PETITION FOR CONSOLIDATION PURSUANT TO 8 CAL CODE OF REGS**
6 **10589 AND REQUEST FOR STAY OF PROCEEDINGS** on the interested parties in
7 said cause, by placing a true copy thereof, enclosed in an envelope addressed as follows:

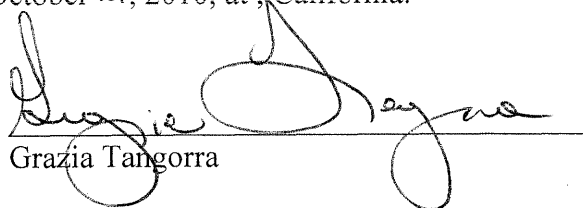
8
9 Division of Worker's Compensation
6150 Van Nuys Blvd., Room 105
10 Van Nuys, CA 91401

11 Division of Workers' Compensation
320 W. Fourth St. 9th Floor
12 Los Angeles, CA 90013

13 Priority First Professional Services
14 245 East Redlands Boulevard, Suite K
San Bernardino, CA 92408
15

16 I am readily familiar with the firm's practice of collection and processing
17 correspondence for mailing. Under that practice such envelope would be sealed and
18 deposited with U.S. postal service on that same day with postage thereon fully prepaid at ,
19 California in the ordinary course of business. I am aware that on motion of the party
20 served, service is presumed invalid if postal cancellation date or postage meter date is
21 more than one day after the date of deposit for mailing in this affidavit.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on October 21, 2010, at , California.

24
25 
26 Grazia Tangorra
27
28

STATE
COMPENSATION
INSURANCE
FUND

IN REPLY REFER TO:

October 20, 2010

Division of Workers' Compensation
320 W. Fourth St., 9th Floor
Los Angeles, CA 90013

Division of Workers' Compensation
6150 Van Nuys Blvd., Room 105
Van Nuys, CA 91401

Attn: WCJ Frank

WCJ Kahn

Re: Compound Pharmacy Consolidation

Your Honors:

Thank you for the opportunity to participate in the Compounding Pharmacy Consolidation at the Los Angeles DWC. (Luis Arellano v. Sherman Oaks Auto Resort) ADJ2131629 (Lead case).

State Fund is committed to the Global Resolution of all pharmacy liens as set forth in your motion which was previously set on October 5, 2010.

At this time State Fund will seek an expansion of the litigation to include all liens filed at all WCAB Boards which involve claims between the individual pharmacies and State Fund.

A copy of the following petitions for consolidation are included:

1. United Services Plus DBA Ronco Drug Pharmacy
2. The Prescription Center Pharmacy
3. RX Funding Solutions
4. Priority First Professional Services
5. Physicians Funding Solutions
6. PhyMed, Inc.
7. New Age Pharmaceuticals, Inc.
8. NCL Pharmaceuticals, Inc.
9. DNM Pharmacy
10. Life Pharmaceutical Management

These consolidations are limited to those pharmacies which have claims in excess of \$100k.

Page: 2

Re: Compound Pharmacy Consolidation

State Fund has not included consolidations for California Pharmacy Management and Dr. Capen as they have been resolved per a Global Settlement Agreement for all Date of Service prior to 3/1/07. The balance of the liens are currently being negotiated.

In addition State Fund has not filed for consolidation for the following entities:

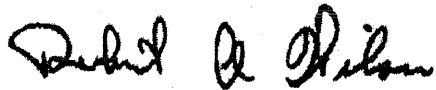
1. SD County Medical Association
2. Physicians RX Network
3. Panther Pharmaceutical Service
4. Ali Mumtaz A

State Fund believes that due to the smaller dollar amounts of these liens and with the assistance of the DWC, they may be resolved through expedited negotiation.

At this time, State Fund requests that a Status Conference be set with each of the entities set forth herein so that we might explain the information required to begin the negotiation process.

State Fund remains open to ADD any additional pharmacies at the request of the DWC.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Wilson". The signature is fluid and cursive, with the first name "Robert" being the most prominent.

Robert A. Wilson
Attorney

gt
encl.

1 Robert A. Wilson, (SBN 102943)
2 State Compensation Insurance Fund
655 North Central Avenue, Suite 400
Glendale, CA 91203-1400

3 Mailing Address: P.O. Box 92622
4 Los Angeles, CA 90009-2622

5 Telephone: 818-550-5340
6 Fax: 818-291-7356

7 Attorney for Defendant
State Compensation Insurance Fund

8 WORKERS' COMPENSATION APPEALS BOARD
9 STATE OF CALIFORNIA

10
11 KIDD, KIMBERLY (01539840) MASTER FILE

12 Applicant,

13 THE PRESCRIPTION CENTER PHARMACY

14 Lien Claimant,

15 v.

16 COMMUNITY CAREER DEVELOPMENT;
17 STATE COMPENSATION INSURANCE FUND,

18 Defendants.

Case No. ADJ2428011

**PETITION FOR
CONSOLIDATION
PURSUANT TO 8 CAL
CODE OF REGS 10589
AND REQUEST FOR
STAY OF PROCEEDINGS**

19
20 State Compensation Insurance Fund (State Fund) submits this Petition for
21 Consolidation pursuant to 8 Cal Code Regs 10589 and 10591 and request for stay of
22 proceedings.

23 **At this time State Fund limits the scope of the Petition for Consolidation for**
24 **the limited purpose of conducting reasonable discovery and settlement negotiations.**
25 **State Fund reserves the right to Petition to expand the consolidation for purposes of**
26 **litigation if necessary.**
27
28

1 Due to inadequate funding and a depletion of qualified personnel, the Workers'
2 Compensation Appeals Board cannot adequately litigate the medical liens being filed
3 individually at the various Workers' Compensation Appeals Boards.

4 **On August 23, 2010 the Los Angeles District Office of the Workers'**
5 **Compensation Appeals Board filed a "Motion to Consolidate and Stay all Lien**
6 **Proceedings regarding Compound Pharmacy Liens" in the Master case of Luis**
7 **Arellano ADJ2131629.**

8 The Board identified 21 separate pharmacies along with numerous "alleged"
9 compounds which are common to these entities.

10 The entities are as follows:

11 Cal Pharmacy Management
12 DNM Pharmacy
13 Landmark Medical Management
14 Life Pharmaceutical Management
15 NCL Pharmacy
16 New Age Pharmaceuticals
17 Panther Pharmacy Management
18 Phymed Inc
19 Physician Funding
20 Physician Rx Network
21 Priority First Professional
22 Rx Funding
23 Sun Life Funding
24 The Prescription Center Pharmacy
25 United Services Plus

26 The liens of Cal Pharmacy Management and Dr. Capen have resolved through
27 an existing Global Settlement Agreement.

28 The compounds are as follows:

Amitriptyline DT
Capsaicin
Dendracin
Diclofenac
Gabapentin
Ketoptofen
Dextromethorphan

1 Cycloprofen
2 Cyclobenzaprine
3 Fluribiprofen
4 GKL Transdermal
5 Lidoderm/Lidocaine
6 Orpheadrine
7 Sertaline
8 Transdermal compound

9 The motion filed by the Los Angeles WCAB is limited to only those lien claims
10 which have been filed at the Los Angeles Board.

11 State Compensation Insurance Fund welcomes the opportunity to assist in the
12 resolution of the medical lien road black at the Los Angeles WCAB, however we believe
13 that the most efficient utilization of resources require expansion of the scope of the
14 consolidation to include all medical lien issues between State Compensation Insurance
15 Fund and each of the individual entities identified by the Board in their motion to
16 consolidate. The consolidation should not be limited to the Los Angeles District office.

17 At this time, State Fund is unable to determine the exact scope of the potential
18 liability of these liens in that State Fund systems do not segregate procedures through
19 identification of individual compounds.

20 Extensive discovery is needed on a global basis to assess the risk of litigation and
21 to obtain adequate settlement authority.

22 State Fund needs to identify the proper parties pursuant to Labor Code § 10550
23 before negotiations can be evaluated.

24 Discovery would be extended to include the following common issues of law and
25 fact.

- 26 1. Has the pharmacy been properly licensed by the California Pharmacy Board to
27 institute compound medications in the State of California, Business
28 Professions Code 4000, et seq., Board of Pharmacy Regs Title 16 Sec 1700 et
seq.

- 1 2. Does a contract rate exist between State Fund and the pharmacy through
2 Express Scripts relationship.
- 3 3. Do the medications identified by the WCAB in its motion to consolidate
4 constitute "compound" drugs which are exempt from Federal Food and Drug
5 Administration (FDA) regulations.
6 Common issues exist to determine whether the compounds are unique as to
7 each patient or are they substantially commercially available compounds.
- 8 4. Has the medical doctor adequately explained the necessities of a "compound"
9 through the prescription and medical reports.
- 10 5. Who actually performs the compounding function.
- 11 6. What is the source and cost of the components involved in the compounding.
- 12 7. Was authorization for compound medication requested pursuant to through
13 Utilization Review pursuant to CCR § 9792.6(o).
- 14 8. What is the reasonable value of the compounded medications.
- 15 9. Does the lien claimants itemization provide adequate information to
16 determine reasonableness setting forth the following factors::
 - 17 a. National Drug Control (NDC)
 - 18 b. Quantity
 - 19 c. List of items charged
 - 20 d. Name of each active ingredient
 - 21 e. Name of each inert ingredient
 - 22 f. The proportion of each ingredient in the compounded medication
- 23 10. With respect to application of CCR § 9789.40 is the date of service prior to or
24 subsequent to March 1, 2007.
- 25 11. Has the provider complied with reg. CCR 1716.1 in regards to 72 hours
26 samples and whether a proper follow up prescription has been supplied.

12. Does lien claimant assert any other claims for reimbursement other than compound medications.

Each of the entities referred to herein, have filed medical treatment liens to pursue additional payment for the payment of the compound medications.

It is anticipated that the medical liens will involve several thousand claims, each of which would involve a separate hearing at the Workers' Compensation Appeals Board.

Consolidation allows the Workers' Compensation Appeals Board to avoid multiple trials on the same issue and with the same parties, and to provide a more consistent outcome.

Given the potential that some of these entities may have filed liens venue in Boards other than the Los Angeles WCAB, State Fund specifically requests that this consolidation be venue at the Van Nuys WCAB under the supervision of Chief Workers' Compensation Judge Mark L. Kahn.

State Fund respectfully requests that a stay of all proceedings relating to all named entities against State Compensation Insurance Fund be granted. The request for stay includes, but is not limited to, suspension of actions to bring liens to Conference and/or Trial as well as cancellation of trials on lien-related issues that are already scheduled.

State Fund agrees that a list of claims will be provided to the WCAB when discovery regarding identification of all claims is completed.

Nothing in this Petition shall neither be construed as a waiver by State Fund of any defenses against lien claimants. State Fund does not waive the right to seek credit and/or reimbursement or any other rights to which State Fund may be entitled against lien claimant.

WHEREFORE, State Compensation Insurance Fund respectfully requests that in the interest of judicial economy, evidence duplication of discovery and trial associated preparation costs and for all other reasons indicated above, this Court:

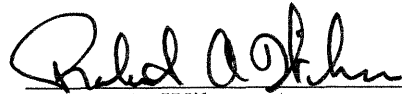
1. Consolidate for purposes of Discovery and settlement all lien claims of the above described entity against State Compensation Insurance Fund.
2. Issue a stay of all WCAB set forth herein, and
3. Allow parties to submit a list of lien claims subject hereto at the close of discovery.

Dated: October 19, 2010

Respectfully submitted,

STATE COMPENSATION INSURANCE
FUND

By:


Robert A. Wilson, Attorney

1 **PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5**

2 I declare that I am employed in the County of , State of California. I am over the
3 age of eighteen years and not a party to the within entitled cause. My business address is:
4 655 N. Central Ave., Glendale, CA 91203 . On October 21, 2010, I served the attached
5 **PETITION FOR CONSOLIDATION PURSUANT TO 8 CAL CODE OF REGS**
6 **10589 AND REQUEST FOR STAY OF PROCEEDINGS** on the interested parties in
7 said cause, by placing a true copy thereof, enclosed in an envelope addressed as follows:

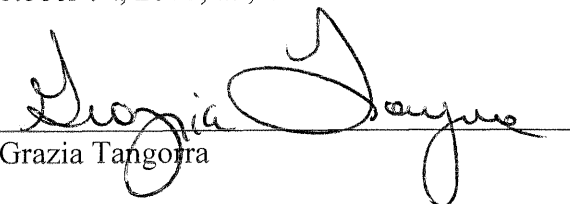
8
9 Division of Workers' Compensation
6150 Van Nuys Blvd., Room 105
10 Van Nuys, CA 91401

11 Division of Workers' Compensation
320 W. Fourth St. 9th Floor
12 Los Angeles, CA 90013

13 The Prescription Center Pharmacy
14 9735 Wilshire Blvd.
Beverly Hills, CA 90212
15

16 I am readily familiar with the firm's practice of collection and processing
17 correspondence for mailing. Under that practice such envelope would be sealed and
18 deposited with U.S. postal service on that same day with postage thereon fully prepaid at ,
19 California in the ordinary course of business. I am aware that on motion of the party
20 served, service is presumed invalid if postal cancellation date or postage meter date is
21 more than one day after the date of deposit for mailing in this affidavit.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on October 21, 2010, at , California.

24
25 
26 Grazia Tangorra
27
28

STATE
COMPENSATION
INSURANCE
FUND

IN REPLY REFER TO:

October 20, 2010

Division of Workers' Compensation
320 W. Fourth St., 9th Floor
Los Angeles, CA 90013

Division of Workers' Compensation
6150 Van Nuys Blvd., Room 105
Van Nuys, CA 91401

Attn: WCJ Frank

WCJ Kahn

Re: Compound Pharmacy Consolidation

Your Honors:

Thank you for the opportunity to participate in the Compounding Pharmacy Consolidation at the Los Angeles DWC. (Luis Arellano v. Sherman Oaks Auto Resort) ADJ2131629 (Lead case).

State Fund is committed to the Global Resolution of all pharmacy liens as set forth in your motion which was previously set on October 5, 2010.

At this time State Fund will seek an expansion of the litigation to include all liens filed at all WCAB Boards which involve claims between the individual pharmacies and State Fund.

A copy of the following petitions for consolidation are included:

1. United Services Plus DBA Ronco Drug Pharmacy
2. The Prescription Center Pharmacy
3. RX Funding Solutions
4. Priority First Professional Services
5. Physicians Funding Solutions
6. PhyMed, Inc.
7. New Age Pharmaceuticals, Inc.
8. NCL Pharmaceuticals, Inc.
9. DNM Pharmacy
10. Life Pharmaceutical Management

These consolidations are limited to those pharmacies which have claims in excess of \$100k.

LEGAL DEPARTMENT
655 North Central Avenue • Glendale, CA 91203-1400
(818) 291-7100
Mailing Address: P.O. Box 92622 • Los Angeles, CA 90009-2622

Page: 2

Re: Compound Pharmacy Consolidation

State Fund has not included consolidations for California Pharmacy Management and Dr. Capen as they have been resolved per a Global Settlement Agreement for all Date of Service prior to 3/1/07. The balance of the liens are currently being negotiated.

In addition State Fund has not filed for consolidation for the following entities:


1. SD County Medical Association
2. Physicians RX Network
3. Panther Pharmaceutical Service
4. Ali Mumtaz A

State Fund believes that due to the smaller dollar amounts of these liens and with the assistance of the DWC, they may be resolved through expedited negotiation.

At this time, State Fund requests that a Status Conference be set with each of the entities set forth herein so that we might explain the information required to begin the negotiation process.

State Fund remains open to ADD any additional pharmacies at the request of the DWC.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Wilson".

Robert A. Wilson
Attorney

gt
encl.

Robert A. Wilson, (SBN 102943)
State Compensation Insurance Fund
655 North Central Avenue, Suite 400
Glendale, CA 91203-1400

Mailing Address: P.O. Box 92622
Los Angeles, CA 90009-2622

Telephone: 818-550-5340
Fax: 818-291-7356

Attorney for Defendant
State Compensation Insurance Fund

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CODAY-LAMB, FLORA (SA640031) MASTER FILE

Case No. ADJ2090329

Applicant,

UNITED SERVICES PLUS DBA RONCO
DRUG PHARMACY

Lien Claimant,

v.

V F W POST 1944 INC.; STATE
COMPENSATION INSURANCE FUND,

Defendants.

**PETITION FOR
CONSOLIDATION
PURSUANT TO 8 CAL
CODE OF REGS 10589
AND REQUEST FOR
STAY OF PROCEEDINGS**

State Compensation Insurance Fund (State Fund) submits this Petition for Consolidation pursuant to 8 Cal Code Regs 10589 and 10591 and request for stay of proceedings.

At this time State Fund limits the scope of the Petition for Consolidation for the limited purpose of conducting reasonable discovery and settlement negotiations.

2010 OCT 21 AM 11:34
EPT OF INDUST RELATIONS
DMC/H/CAB

RECEIVED

1 **State Fund reserves the right to Petition to expand the consolidation for purposes of**
2 **litigation if necessary.**

3 Due to inadequate funding and a depletion of qualified personnel, the Workers'
4 Compensation Appeals Board cannot adequately litigate the medical liens being filed
5 individually at the various Workers' Compensation Appeals Boards.

6 **On August 23, 2010 the Los Angeles District Office of the Workers'**
7 **Compensation Appeals Board filed a "Motion to Consolidate and Stay all Lien**
8 **Proceedings regarding Compound Pharmacy Liens" in the Master case of Luis**
9 **Arellano ADJ2131629.**

10 The Board identified 21 separate pharmacies along with numerous "alleged"
11 compounds which are common to these entities.

12 The entities are as follows:

13 Cal Pharmacy Management
14 DNM Pharmacy
15 Landmark Medical Management
16 Life Pharmaceutical Management
17 NCL Pharmacy
18 New Age Pharmaceuticals
19 Panther Pharmacy Management
20 Phymed Inc
21 Physician Funding
22 Physician Rx Network
23 Priority First Professional
24 Rx Funding
25 Sun Life Funding
26 The Prescription Center Pharmacy
27 United Services Plus

28 The liens of Cal Pharmacy Management and Dr. Capen have resolved through
an existing Global Settlement Agreement.

The compounds are as follows:

Amitriptyline DT
Capsaicin
Dendracin
Diclofenac

1 Gabapentin
2 Ketoptofen
3 Dextromethorphan
4 Cycloprofen
5 Cyclobenzaprine
6 Fluribiprofen
7 GKL Transdermal
8 Lidoderm/Lidocaine
9 Orpheadrine
10 Sertaline
11 Transdermal compound

12 The motion filed by the Los Angeles WCAB is limited to only those lien claims
13 which have been filed at the Los Angeles Board.

14 State Compensation Insurance Fund welcomes the opportunity to assist in the
15 resolution of the medical lien road black at the Los Angeles WCAB, however we believe
16 that the most efficient utilization of resources require expansion of the scope of the
17 consolidation to include all medical lien issues between State Compensation Insurance
18 Fund and each of the individual entities identified by the Board in their motion to
19 consolidate. The consolidation should not be limited to the Los Angeles District office.

20 At this time, State Fund is unable to determine the exact scope of the potential
21 liability of these liens in that State Fund systems do not segregate procedures through
22 identification of individual compounds.

23 Extensive discovery is needed on a global basis to assess the risk of litigation and
24 to obtain adequate settlement authority.

25 State Fund needs to identify the proper parties pursuant to Labor Code § 10550
26 before negotiations can be evaluated.

27 Discovery would be extended to include the following common issues of law and
28 fact.

1. Has the pharmacy been properly licensed by the California Pharmacy Board to
institute compound medications in the State of California, Business

1 Professions Code 4000, et seq., Board of Pharmacy Regs Title 16 Sec 1700 et
2 seq.

3 2. Does a contract rate exist between State Fund and the pharmacy through
4 Express' ts relationship.

5 3. Do the dications identified by the WCAB in its motion to consolidate
6 constitute "compound" drugs which are exempt from Federal Food and Drug
7 Administration (FDA) regulations.

8 Common issues exist to determine whether the compounds are unique as to
9 each patient or are they substantially commercially available compounds.

10 4. Has the medical doctor adequately explained the necessities of a "compound"
11 through the prescription and medical reports.

12 5. Who actually performs the compounding function.

13 6. What is the source and cost of the components involved in the compounding.

14 7. Was authorization for compound medication requested pursuant to through
15 Utilization Review pursuant to CCR § 9792.6(o).

16 8. What is the reasonable value of the compounded medications.

17 9. Does the lien claimants itemization provide adequate information to
18 determine reasonableness setting forth the following factors::

19 a. National Drug Control (NDC)

20 b. Quantity

21 c. List of items charged

22 d. Name of each active ingredient

23 e. Name of each inert ingredient

24 f. The proportion of each ingredient in the compounded medication

25 10. With respect to application of CCR § 9789.40 is the date of service prior to or
26 subsequent to March 1, 2007.

1 11. Has the provider complied with reg. CCR 1716.1 in regards to 72 hours
2 samples and whether a proper follow up prescription has been supplied.

3 12. Does lien claimant assert any other claims for reimbursement other than
4 compound medications.

5 Each of the entities referred to herein, have filed medical treatment liens to pursue
6 additional payment for the payment of the compound medications.

7 It is anticipated that the medical liens will involve several thousand claims, each
8 of which would involve a separate hearing at the Workers' Compensation Appeals Board.

9 Consolidation allows the Workers' Compensation Appeals Board to avoid
10 multiple trials on the same issue and with the same parties, and to provide a more
11 consistent outcome.

12 Given the potential that some of these entities may have filed liens venue in
13 Boards other than the Los Angeles WCAB, State Fund specifically requests that this
14 consolidation be venue at the Van Nuys WCAB under the supervision of Chief Workers'
15 Compensation Judge Mark L. Kahn.

16 State Fund respectfully requests that a stay of all proceedings relating to all named
17 entities against State Compensation Insurance Fund be granted. The request for stay
18 includes, but is not limited to, suspension of actions to bring liens to Conference and/or
19 Trial as well as cancellation of trials on lien-related issues that are already scheduled.

20 State Fund agrees that a list of claims will be provided to the WCAB when
21 discovery regarding identification of all claims is completed.

22 Nothing in this Petition shall neither be construed as a waiver by State Fund of
23 any defenses against lien claimants. State Fund does not waive the right to seek credit
24 and/or reimbursement or any other rights to which State Fund may be entitled against lien
25 claimant.

1 **WHEREFORE**, State Compensation Insurance Fund respectfully requests that in
2 the interest of judicial economy, evidence duplication of discovery and trial associated
3 preparation costs and for all other reasons indicated above, this Court:

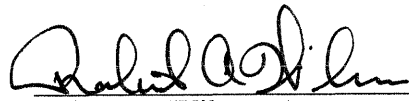
- 4 1. Consolidate for purposes of Discovery and settlement all lien claims of the
5 above described entity against State Compensation Insurance Fund.
6 2. Issue a stay of all WCAB set forth herein, and
7 3. Allow parties to submit a list of lien claims subject hereto at the close of
8 discovery.

9
10 Dated: October 19, 2010

Respectfully submitted,

11 STATE COMPENSATION INSURANCE
12 FUND

13
14 By:


Robert A. Wilson, Attorney

1 **PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5**

2 I declare that I am employed in the County of , State of California. I am over the
3 age of eighteen years and not a party to the within entitled cause. My business address is:
4 655 N. Central Ave., Glendale, CA 91203 . On October 21, 2010, I served the attached
5 **PETITION FOR CONSOLIDATION PURSUANT TO 8 CAL CODE OF REGS**
6 **10589 AND REQUEST FOR STAY OF PROCEEDINGS** on the interested parties in
7 said cause, by placing a true copy thereof, enclosed in an envelope addressed as follows:

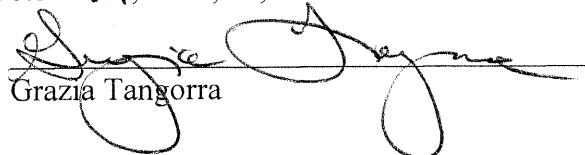
8 Division of Worker's Compensation
9 6150 Van Nuys Blvd., Room 105
10 Van Nuys, CA 91401

11 Division of Worker's Compensation
12 320 W. Fourth St., 9th Floor
Los Angeles, CA 90013

13 United Services Plus
14 DBA Ronco Drug Pharmacy
15 18607 Ventura Blvd., Suite 109
Tarzana, CA 91356

16 I am readily familiar with the firm's practice of collection and processing
17 correspondence for mailing. Under that practice such envelope would be sealed and
18 deposited with U.S. postal service on that same day with postage thereon fully prepaid at ,
19 California in the ordinary course of business. I am aware that on motion of the party
20 served, service is presumed invalid if postal cancellation date or postage meter date is
21 more than one day after the date of deposit for mailing in this affidavit.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on October 21, 2010, at , California.

24 
25 Grazia Tangorra
26
27
28

STATE
COMPENSATION
INSURANCE
FUND

IN REPLY REFER TO:

October 20, 2010

Division of Workers' Compensation
320 W. Fourth St., 9th Floor
Los Angeles, CA 90013

Division of Workers' Compensation
6150 Van Nuys Blvd., Room 105
Van Nuys, CA 91401

Attn: WCJ Frank

WCJ Kahn

Re: Compound Pharmacy Consolidation

Your Honors:

Thank you for the opportunity to participate in the Compounding Pharmacy Consolidation at the Los Angeles DWC. (Luis Arellano v. Sherman Oaks Auto Resort) ADJ2131629 (Lead case).

State Fund is committed to the Global Resolution of all pharmacy liens as set forth in your motion which was previously set on October 5, 2010.

At this time State Fund will seek an expansion of the litigation to include all liens filed at all WCAB Boards which involve claims between the individual pharmacies and State Fund.

A copy of the following petitions for consolidation are included:

1. United Services Plus DBA Ronco Drug Pharmacy
2. The Prescription Center Pharmacy
3. RX Funding Solutions
4. Priority First Professional Services
5. Physicians Funding Solutions
6. PhyMed, Inc.
7. New Age Pharmaceuticals, Inc.
8. NCL Pharmaceuticals, Inc.
9. DNM Pharmacy
10. Life Pharmaceutical Management

These consolidations are limited to those pharmacies which have claims in excess of \$100k.

LEGAL DEPARTMENT
655 North Central Avenue • Glendale, CA 91203-1400
(818) 291-7100
Mailing Address: P.O. Box 92622 • Los Angeles, CA 90009-2622

Page: 2

Re: Compound Pharmacy Consolidation

State Fund has not included consolidations for California Pharmacy Management and Dr. Capen as they have been resolved per a Global Settlement Agreement for all Date of Service prior to 3/1/07. The balance of the liens are currently being negotiated.

In addition State Fund has not filed for consolidation for the following entities:

1. SD County Medical Association
2. Physicians RX Network
3. Panther Pharmaceutical Service
4. Ali Mumtaz A

State Fund believes that due to the smaller dollar amounts of these liens and with the assistance of the DWC, they may be resolved through expedited negotiation.

At this time, State Fund requests that a Status Conference be set with each of the entities set forth herein so that we might explain the information required to begin the negotiation process.

State Fund remains open to ADD any additional pharmacies at the request of the DWC.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Wilson".

Robert A. Wilson
Attorney

gt
encl.

1 Robert A. Wilson, (SBN 102943)
2 State Compensation Insurance Fund
3 655 North Central Avenue, Suite 400
4 Glendale, CA 91203-1400

5 Mailing Address: P.O. Box 92622
6 Los Angeles, CA 90009-2622

7 Telephone: 818-550-5340
8 Fax: 818-291-7356

9 Attorney for Defendant
10 State Compensation Insurance Fund

11 WORKERS' COMPENSATION APPEALS BOARD
12 STATE OF CALIFORNIA
13
14

15 SALAS, JUAN (05215150) MASTER FILE

16 Applicant,

17 PHYSICIANS FUNDING SOLUTIONS

18 Lien Claimant,

19 v.

20 A1A INTERNATIONAL FORWARDING, INC.;
21 STATE COMPENSATION INSURANCE FUND,

22 Defendants.

Case No. ADJ2203008

**PETITION FOR
CONSOLIDATION
PURSUANT TO 8 CAL
CODE OF REGS 10589
AND REQUEST FOR
STAY OF PROCEEDINGS**

23 State Compensation Insurance Fund (State Fund) submits this Petition for
24 Consolidation pursuant to 8 Cal Code Regs 10589 and 10591 and request for stay of
25 proceedings.

26 **At this time State Fund limits the scope of the Petition for Consolidation for**
27 **the limited purpose of conducting reasonable discovery and settlement negotiations.**
28 **State Fund reserves the right to Petition to expand the consolidation for purposes of**
litigation if necessary.

1 Due to inadequate funding and a depletion of qualified personnel, the Workers'
2 Compensation Appeals Board cannot adequately litigate the medical liens being filed
3 individually at the various Workers' Compensation Appeals Boards.

4 **On August 23, 2010 the Los Angeles District Office of the Workers'**
5 **Compensation Appeals Board filed a "Motion to Consolidate and Stay all Lien**
6 **Proceedings regarding Compound Pharmacy Liens" in the Master case of Luis**
7 **Arellano ADJ2131629.**

8 The Board identified 21 separate pharmacies along with numerous "alleged"
9 compounds which are common to these entities.

10 The entities are as follows:

11 Cal Pharmacy Management
12 DNM Pharmacy
13 Landmark Medical Management
14 Life Pharmaceutical Management
15 NCL Pharmacy
16 New Age Pharmaceuticals
17 Panther Pharmacy Management
18 Phymed Inc
19 Physician Funding
20 Physician Rx Network
21 Priority First Professional
22 Rx Funding
23 Sun Life Funding
24 The Prescription Center Pharmacy
25 United Services Plus

26 The liens of Cal Pharmacy Management and Dr. Capen have resolved through
27 an existing Global Settlement Agreement.

28 The compounds are as follows:

Amitriptyline DT
Capsaicin
Dendracin
Diclofenac
Gabapentin
Ketoptofen
Dextromethorphan

1 Cycloprofen
2 Cyclobenzaprine
3 Fluribiprofen
4 GKL Transdermal
5 Lidoderm/Lidocaine
6 Orpheadrine
7 Sertaline
8 Transdermal compound

9 The motion filed by the Los Angeles WCAB is limited to only those lien claims
10 which have been filed at the Los Angeles Board.

11 State Compensation Insurance Fund welcomes the opportunity to assist in the
12 resolution of the medical lien road black at the Los Angeles WCAB, however we believe
13 that the most efficient utilization of resources require expansion of the scope of the
14 consolidation to include all medical lien issues between State Compensation Insurance
15 Fund and each of the individual entities identified by the Board in their motion to
16 consolidate. The consolidation should not be limited to the Los Angeles District office.

17 At this time, State Fund is unable to determine the exact scope of the potential
18 liability of these liens in that State Fund systems do not segregate procedures through
19 identification of individual compounds.

20 Extensive discovery is needed on a global basis to assess the risk of litigation and
21 to obtain adequate settlement authority.

22 State Fund needs to identify the proper parties pursuant to Labor Code § 10550
23 before negotiations can be evaluated.

24 Discovery would be extended to include the following common issues of law and
25 fact.

- 26 1. Has the pharmacy been properly licensed by the California Pharmacy Board to
27 institute compound medications in the State of California, Business
28 Professions Code 4000, et seq., Board of Pharmacy Regs Title 16 Sec 1700 et
seq.

2. Does a contract rate exist between State Fund and the pharmacy through Express Scripts relationship.
3. Do the medications identified by the WCAB in its motion to consolidate constitute "compound" drugs which are exempt from Federal Food and Drug Administration (FDA) regulations.
Common issues exist to determine whether the compounds are unique as to each patient or are they substantially commercially available compounds.
4. Has the medical doctor adequately explained the necessities of a "compound" through the prescription and medical reports.
5. Who actually performs the compounding function.
6. What is the source and cost of the components involved in the compounding.
7. Was authorization for compound medication requested pursuant to through Utilization Review pursuant to CCR § 9792.6(o).
8. What is the reasonable value of the compounded medications.
9. Does the lien claimants itemization provide adequate information to determine reasonableness setting forth the following factors::
 - a. National Drug Control (NDC)
 - b. Quantity
 - c. List of items charged
 - d. Name of each active ingredient
 - e. Name of each inert ingredient
 - f. The proportion of each ingredient in the compounded medication
10. With respect to application of CCR § 9789.40 is the date of service prior to or subsequent to March 1, 2007.
11. Has the provider complied with reg. CCR 1716.1 in regards to 72 hours samples and whether a proper follow up prescription has been supplied.

12. Does lien claimant assert any other claims for reimbursement other than compound medications.

Each of the entities referred to herein, have filed medical treatment liens to pursue additional payment for the payment of the compound medications.

It is anticipated that the medical liens will involve several thousand claims, each of which would involve a separate hearing at the Workers' Compensation Appeals Board.

Consolidation allows the Workers' Compensation Appeals Board to avoid multiple trials on the same issue and with the same parties, and to provide a more consistent outcome.

Given the potential that some of these entities may have filed liens venue in Boards other than the Los Angeles WCAB, State Fund specifically requests that this consolidation be venue at the Van Nuys WCAB under the supervision of Chief Workers' Compensation Judge Mark L. Kahn.

State Fund respectfully requests that a stay of all proceedings relating to all named entities against State Compensation Insurance Fund be granted. The request for stay includes, but is not limited to, suspension of actions to bring liens to Conference and/or Trial as well as cancellation of trials on lien-related issues that are already scheduled.

State Fund agrees that a list of claims will be provided to the WCAB when discovery regarding identification of all claims is completed.

Nothing in this Petition shall neither be construed as a waiver by State Fund of any defenses against lien claimants. State Fund does not waive the right to seek credit and/or reimbursement or any other rights to which State Fund may be entitled against lien claimant.

WHEREFORE, State Compensation Insurance Fund respectfully requests that in the interest of judicial economy, evidence duplication of discovery and trial associated preparation costs and for all other reasons indicated above, this Court:

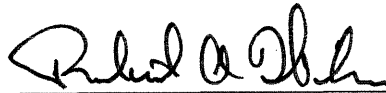
1. Consolidate for purposes of Discovery and settlement all lien claims of the above described entity against State Compensation Insurance Fund.
2. Issue a stay of all WCAB set forth herein, and
3. Allow parties to submit a list of lien claims subject hereto at the close of discovery.

Dated: October 19, 2010

Respectfully submitted,

STATE COMPENSATION INSURANCE
FUND

By:



Robert A. Wilson, Attorney

1 **PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5**

2 I declare that I am employed in the County of , State of California. I am over the
3 age of eighteen years and not a party to the within entitled cause. My business address is:
4 655 N. Central Ave., Glendale, CA 91203 . On October 21, 2010, I served the attached
5 **PETITION FOR CONSOLIDATION PURSUANT TO 8 CAL CODE OF REGS**
6 **10589 AND REQUEST FOR STAY OF PROCEEDINGS** on the interested parties in
7 said cause, by placing a true copy thereof, enclosed in an envelope addressed as follows:

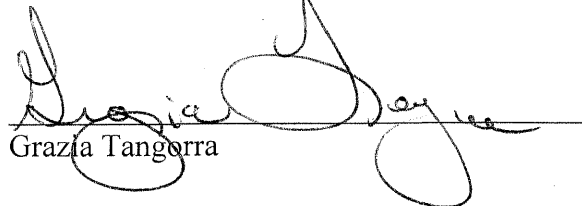
8
9 Division of Worker's Compensation
6150 Van Nuys Blvd., Room 105
10 Van Nuys, CA 91401

11 Division of Workers' Compensation
320 W. Fourth St. 9th Floor
12 Los Angeles, CA 90013

13 Physicians Funding Solutions
14 12223 Highland Ave., No. 106-560
Rancho Cucamonga, CA 91739
15

16 I am readily familiar with the firm's practice of collection and processing
17 correspondence for mailing. Under that practice such envelope would be sealed and
18 deposited with U.S. postal service on that same day with postage thereon fully prepaid at ,
19 California in the ordinary course of business. I am aware that on motion of the party
20 served, service is presumed invalid if postal cancellation date or postage meter date is
21 more than one day after the date of deposit for mailing in this affidavit.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on October 21, 2010, at , California.

24
25 
26 Grazia Tangorra
27
28

STATE
COMPENSATION
INSURANCE
FUND

IN REPLY REFER TO:

October 20, 2010

Division of Workers' Compensation
320 W. Fourth St., 9th Floor
Los Angeles, CA 90013

Division of Workers' Compensation
6150 Van Nuys Blvd., Room 105
Van Nuys, CA 91401

Attn: WCJ Frank

WCJ Kahn

Re: Compound Pharmacy Consolidation

Your Honors:

Thank you for the opportunity to participate in the Compounding Pharmacy Consolidation at the Los Angeles DWC. (Luis Arellano v. Sherman Oaks Auto Resort) ADJ2131629 (Lead case).

State Fund is committed to the Global Resolution of all pharmacy liens as set forth in your motion which was previously set on October 5, 2010.

At this time State Fund will seek an expansion of the litigation to include all liens filed at all WCAB Boards which involve claims between the individual pharmacies and State Fund.

A copy of the following petitions for consolidation are included:

1. United Services Plus DBA Ronco Drug Pharmacy
2. The Prescription Center Pharmacy
3. RX Funding Solutions
4. Priority First Professional Services
5. Physicians Funding Solutions
6. PhyMed, Inc.
7. New Age Pharmaceuticals, Inc.
8. NCL Pharmaceuticals, Inc.
9. DNM Pharmacy
10. Life Pharmaceutical Management

These consolidations are limited to those pharmacies which have claims in excess of \$100k.

Page: 2

Re: Compound Pharmacy Consolidation

State Fund has not included consolidations for California Pharmacy Management and Dr. Capen as they have been resolved per a Global Settlement Agreement for all Date of Service prior to 3/1/07. The balance of the liens are currently being negotiated.

In addition State Fund has not filed for consolidation for the following entities:

1. SD County Medical Association
2. Physicians RX Network
3. Panther Pharmaceutical Service
4. Ali Mumtaz A

State Fund believes that due to the smaller dollar amounts of these liens and with the assistance of the DWC, they may be resolved through expedited negotiation.

At this time, State Fund requests that a Status Conference be set with each of the entities set forth herein so that we might explain the information required to begin the negotiation process.

State Fund remains open to ADD any additional pharmacies at the request of the DWC.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Wilson".

Robert A. Wilson
Attorney

gt
encl.

1 Robert A. Wilson, (SBN 102943)
2 State Compensation Insurance Fund
3 655 North Central Avenue, Suite 400
4 Glendale, CA 91203-1400

5 Mailing Address: P.O. Box 92622
6 Los Angeles, CA 90009-2622

7 Telephone: 818-550-5340
8 Fax: 818-291-7356

9 Attorney for Defendant
10 State Compensation Insurance Fund

11 WORKERS' COMPENSATION APPEALS BOARD
12 STATE OF CALIFORNIA

13 MOLINA, ALEJANDRO (05246456) MASTER FILE

Case No. ADJ1352475

14 Applicant,

15 RX FUNDING SOLUTIONS

16 Lien Claimant,

17 v.

18 MICHAEL RUSSO CORPORATION; STATE
19 COMPENSATION INSURANCE FUND,

20 Defendants.

**PETITION FOR
CONSOLIDATION
PURSUANT TO 8 CAL
CODE OF REGS 10589
AND REQUEST FOR
STAY OF PROCEEDINGS**

21 State Compensation Insurance Fund (State Fund) submits this Petition for
22 Consolidation pursuant to 8 Cal Code Regs 10589 and 10591 and request for stay of
23 proceedings.

24 **At this time State Fund limits the scope of the Petition for Consolidation for**
25 **the limited purpose of conducting reasonable discovery and settlement negotiations.**
26 **State Fund reserves the right to Petition to expand the consolidation for purposes of**
27 **litigation if necessary.**
28

1 Due to inadequate funding and a depletion of qualified personnel, the Workers'
2 Compensation Appeals Board cannot adequately litigate the medical liens being filed
3 individually at the various Workers' Compensation Appeals Boards.

4 **On August 23, 2010 the Los Angeles District Office of the Workers'**
5 **Compensation Appeals Board filed a "Motion to Consolidate and Stay all Lien**
6 **Proceedings regarding Compound Pharmacy Liens" in the Master case of Luis**
7 **Arellano ADJ2131629.**

8 The Board identified 21 separate pharmacies along with numerous "alleged"
9 compounds which are common to these entities.

10 The entities are as follows:

11 Cal Pharmacy Management
12 DNM Pharmacy
13 Landmark Medical Management
14 Life Pharmaceutical Management
15 NCL Pharmacy
16 New Age Pharmaceuticals
17 Panther Pharmacy Management
18 Phymed Inc
19 Physician Funding
20 Physician Rx Network
21 Priority First Professional
22 Rx Funding
23 Sun Life Funding
24 The Prescription Center Pharmacy
25 United Services Plus

26 The liens of Cal Pharmacy Management and Dr. Capen have resolved through
27 an existing Global Settlement Agreement.

28 The compounds are as follows:

Amitriptyline DT
Capsaicin
Dendracin
Diclofenac
Gabapentin
Ketoptofen
Dextromethorphan

1 Cycloprofen
2 Cyclobenzaprine
3 Fluribiprofen
4 GKL Transdernal
5 Lidoderm/Lidocaine
6 Orpheadrine
7 Sertaline
8 Transdermal compound

9 The motion filed by the Los Angeles WCAB is limited to only those lien claims
10 which have been filed at the Los Angeles Board.

11 State Compensation Insurance Fund welcomes the opportunity to assist in the
12 resolution of the medical lien road block at the Los Angeles WCAB, however we believe
13 that the most efficient utilization of resources require expansion of the scope of the
14 consolidation to include all medical lien issues between State Compensation Insurance
15 Fund and each of the individual entities identified by the Board in their motion to
16 consolidate. The consolidation should not be limited to the Los Angeles District office.

17 At this time, State Fund is unable to determine the exact scope of the potential
18 liability of these liens in that State Fund systems do not segregate procedures through
19 identification of individual compounds.

20 Extensive discovery is needed on a global basis to assess the risk of litigation and
21 to obtain adequate settlement authority.

22 State Fund needs to identify the proper parties pursuant to Labor Code § 10550
23 before negotiations can be evaluated.

24 Discovery would be extended to include the following common issues of law and
25 fact.

- 26 1. Has the pharmacy been properly licensed by the California Pharmacy Board to
27 institute compound medications in the State of California, Business
28 Professions Code 4000, et seq., Board of Pharmacy Regs Title 16 Sec 1700 et
seq.

2. Does a contract rate exist between State Fund and the pharmacy through Express Scripts relationship.
3. Do the medications identified by the WCAB in its motion to consolidate constitute "compound" drugs which are exempt from Federal Food and Drug Administration (FDA) regulations.
Common issues exist to determine whether the compounds are unique as to each patient or are they substantially commercially available compounds.
4. Has the medical doctor adequately explained the necessities of a "compound" through the prescription and medical reports.
5. Who actually performs the compounding function.
6. What is the source and cost of the components involved in the compounding.
7. Was authorization for compound medication requested pursuant to through Utilization Review pursuant to CCR § 9792.6(o).
8. What is the reasonable value of the compounded medications.
9. Does the lien claimants itemization provide adequate information to determine reasonableness setting forth the following factors::
 - a. National Drug Control (NDC)
 - b. Quantity
 - c. List of items charged
 - d. Name of each active ingredient
 - e. Name of each inert ingredient
 - f. The proportion of each ingredient in the compounded medication
10. With respect to application of CCR § 9789.40 is the date of service prior to or subsequent to March 1, 2007.
11. Has the provider complied with reg. CCR 1716.1 in regards to 72 hours samples and whether a proper follow up prescription has been supplied.

1 12. Does lien claimant assert any other claims for reimbursement other than
2 compound medications.

3 Each of the entities referred to herein, have filed medical treatment liens to pursue
4 additional payment for the payment of the compound medications.

5 It is anticipated that the medical liens will involve several thousand claims, each
6 of which would involve a separate hearing at the Workers' Compensation Appeals Board.

7 Consolidation allows the Workers' Compensation Appeals Board to avoid
8 multiple trials on the same issue and with the same parties, and to provide a more
9 consistent outcome.

10 Given the potential that some of these entities may have filed liens venue in
11 Boards other than the Los Angeles WCAB, State Fund specifically requests that this
12 consolidation be venue at the Van Nuys WCAB under the supervision of Chief Workers'
13 Compensation Judge Mark L. Kahn.

14 State Fund respectfully requests that a stay of all proceedings relating to all named
15 entities against State Compensation Insurance Fund be granted. The request for stay
16 includes, but is not limited to, suspension of actions to bring liens to Conference and/or
17 Trial as well as cancellation of trials on lien-related issues that are already scheduled.

18 State Fund agrees that a list of claims will be provided to the WCAB when
19 discovery regarding identification of all claims is completed.

20 Nothing in this Petition shall neither be construed as a waiver by State Fund of
21 any defenses against lien claimants. State Fund does not waive the right to seek credit
22 and/or reimbursement or any other rights to which State Fund may be entitled against lien
23 claimant.

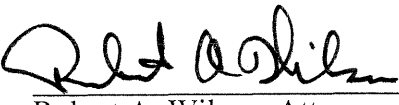
24 **WHEREFORE**, State Compensation Insurance Fund respectfully requests that in
25 the interest of judicial economy, evidence duplication of discovery and trial associated
26 preparation costs and for all other reasons indicated above, this Court:

1. Consolidate for purposes of Discovery and settlement all lien claims of the above described entity against State Compensation Insurance Fund.
2. Issue a stay of all WCAB set forth herein, and
3. Allow parties to submit a list of lien claims subject hereto at the close of discovery.

Dated: October 19, 2010

Respectfully submitted,

STATE COMPENSATION INSURANCE
FUND

By: 
Robert A. Wilson, Attorney

1 **PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5**

2 I declare that I am employed in the County of , State of California. I am over the
3 age of eighteen years and not a party to the within entitled cause. My business address is:
4 655 N. Central Ave., Glendale, CA 91203 . On October **21**, 2010, I served the attached
5 **PETITION FOR CONSOLIDATION PURSUANT TO 8 CAL CODE OF REGS**
6 **10589 AND REQUEST FOR STAY OF PROCEEDINGS** on the interested parties in
7 said cause, by placing a true copy thereof, enclosed in an envelope addressed as follows:

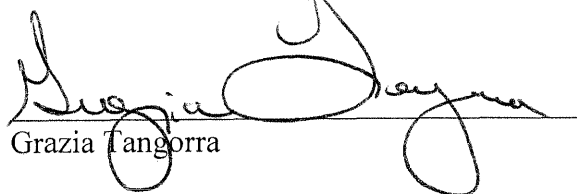
8
9 Division of Worker's Compensation
6150 Van Nuys Blvd., Room 105
10 Van Nuys, CA 91401

11 Division of Workers' Compensation
320 W. Fourth St. 9th Floor
12 Los Angeles, CA 90013

13 Rx Funding Solutions
14 7375 Day Creek Blvd., Suite 103-12
Rancho Cucamonga, CA 91739
15

16 I am readily familiar with the firm's practice of collection and processing
17 correspondence for mailing. Under that practice such envelope would be sealed and
18 deposited with U.S. postal service on that same day with postage thereon fully prepaid at ,
19 California in the ordinary course of business. I am aware that on motion of the party
20 served, service is presumed invalid if postal cancellation date or postage meter date is
21 more than one day after the date of deposit for mailing in this affidavit.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on October **21**, 2010, at , California.

24
25 
26 Grazia Tangorra
27
28